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NOVEMBER 1984

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Liberty Means Responsibility

My argument against socialism is that America already has the best economic and political system yet devised, and that this is proven by her glorious record—and not in a paper blueprint. America did not become the breadbasket, the factory, the bank, and the hope of the world by following the wrong systems or believing in the wrong principles. Her solution is to reacquaint herself with her own best way of life, and to live up to its tenets more faithfully—not to throw it away before she has completely understood or practiced it.

American capitalism has never failed; only some of our human capitalists have failed. Whenever a free-enterpriser achieves his own goal, and then attempts to shut the door of opportunity behind him, or to choke off the free play of competition around him, then he has cheated his own system. Whenever believers in freedom discriminate against minorities, or show favoritism to meritless friends, then they are sabotaging their own constitutional principles and weakening the foundations upon which America was built. Whenever individuals or groups in America use the political power to gain advantage at the expense of others, then such persons or groups are undermining the structure of our republic, and the results will be evil and unjust. Whenever an American acquires wealth or power—and then fails to be a good and honest steward of these benefits—then he not only denies the principles of America, he denies the principles of Christianity.

The answer, and the only answer, is for all of us to educate ourselves to the responsibilities as well as to the benefits of freedom. Perhaps as a people, we are not morally strong enough to be free. If that is the case, then we shall certainly lose our freedom, and it will not matter much what "ism" supplants Americanism. But this will not prove that our free way of life was not the best way. It will only prove that we were not worthy of it.

—Betty Knowles Hunt, 1951

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Hans F. Sennholz

The "Natural" Rate of Unemployment

MAN cannot impose his will on nature until he first ascertains what her will is. She sets the rules that make cause and consequences inseparable, and passes the laws by which man must live. In his interaction with nature and the physical universe man is eagerly searching for her ordinances and readily submitting to her will. But in his interhuman relations he is ever desirous of declaring his independence. He defies her will and makes his own rules; he passes laws and regulations by counting votes, and creates governments that are to enforce his wishes. Relying on legislators and enforcement officials, he seeks to modify nature or, if she should not bend, ignore her entirely.

It is unnatural that man should be unemployed. There are countless needs and wants not fulfilled, desires not met. Labor is the great provider and producer of wealth; it moves all other causes. And yet, there also is unemployment because political man wants to modify human nature. He passes minimum wage laws and assigns costly benefits that exceed the productivity of millions of individuals. He makes them "uneconomical" and thereby condemns them to unemployment. Having created an army of unwanted workers, he then seeks to inflate and depreciate his currency in order to generate new demand for labor. But all the currency depreciation cannot for long alleviate the

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unemployment. It lingers on year after year as if it were sustained by natural law.

A few writers actually postulate a theory of a "natural" rate of unemployment. Their intentions are laudable, seeking to dissuade government from inflating the currency in order to create more jobs. All such efforts are futile, they contend, because inflation does not affect the "natural" rate. But despite their noble opposition to currency depreciation, these writers quietly acquiesce in the policies that are creating the unemployment. They speak of "natural rates" that actually are the rates of human folly that is causing the unemployment. They are elevating folly to "nature" and thereby reinforcing the folly.

In a staff study prepared for the Subcommittee on Monetary and Fiscal Policy of the Joint Economic Committee of the U.S. Congress,[1] Lowell E. Gallaway and Richard K. Vedder define the "natural" rate of unemployment as "the minimum sustainable rate of unemployment for the economy given a stable rate of price inflation. Put another way, the 'natural' rate of unemployment may be thought of as the 'equilibrium' rate of unemployment."[2] The authors thereby seek to remove the unemployment phenomenon from the political arena and elevate it to an equilibrium. According to Gallaway and Vedder, "the 'natural' or 'equilibrium' rate of unemployment can be thought of as a basic constraint that the economy faces."[3]

"Frictional" Unemployment

The natural rate is said to consist of two components: frictional and structural. The former denotes the unemployment that results from economic changes necessitating reallocation and re-employment of labor. The latter, which is the more important component, is said to reflect underlying factors, such as the industrial demand for certain skills, the demographic composition of the labor force, institutional constraints, and the behavioral responses of the total population. Collectively, all these factors are said to shape the "minimum permanently sustainable unemployment rate."

When economists resort to metaphors borrowed from the natural sciences their understanding is liable to grievous error. The notion of "friction" is borrowed from physics and denotes a force that resists the motion of one body in contact with another. "Frictional" unemployment means to convey unemployment that results from a force resisting full employment. Yet there is no such natural force that gives rise to unemployment. Man chooses between alternatives. He may choose leisure over labor, unemployment over production. He may be

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unemployed voluntarily or by institutional force. There are no other types of unemployment.

Changing conditions may necessitate changes in employment; they cause no frictions in human behavior. The world is a scene of changes; today is not yesterday, and not tomorrow. Change may be painful, yet ever needful. Economic changes may necessitate labor adjustments in pay, conditions and location. They may require new learning and training and demand new efforts by the individual.

In a free and unhampered market all the changes in the world do not create unemployment unless the individual chooses to be unemployed. He may choose to wait until an employment opportunity presents itself in a more desirable location, in another line of business or with a favorite employer. He may choose to wait for noneconomic reasons, to be closer to his family, or with people who share his religious, moral or political views. His waiting is a matter of choice, his unemployment is voluntary.

On the unhampered market, wage rates for each type of labor adjust continually so that all those eager to work can find a job. At the market wage all jobseekers can get jobs and all employers can find as many workers as they would like to hire.

When seen in this light, even seasonal unemployment is voluntary. In months of intense demand, wage rates must be high enough to attract a sufficient number of workers from other trades and occupations. They may permit the seasonal workers to save part of their earnings during the busy season and remain unemployed in the off season. They may permit some workers to attend school and seek instruction during the school year, which may coincide with the off season. Of course, every season presents its special demand for labor which may offer opportunities to adjustable, mobile labor throughout the year. If some people nevertheless choose to be idle they do so knowingly and voluntarily.

"Structural" Unemployment

It is appropriate, however, to distinguish between voluntary unemployment and so-called "structural" unemployment, the latter relating to unemployment that is "constructed" or "built" by the social and economic institutions of man. It, too, is voluntary in the sense that man chooses to create these institutions and causes them to act in certain ways. But the institutions may be endowed with coercive powers that deny the individual the freedom to choose. The minimum wage law negates the right to employment at compensation rates lower than the minimum. The unemployment it creates is voluntary for the society that enacts such laws, it is involun-

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tary for the individual whom it condemns to unemployment.

"Structural" unemployment may be the product of political intention and design, or it may be the bitter fruit of economic ignorance. Laws and regulations that create the unemployment may be enacted by legislators who are utterly ignorant in economic matters. Enamored of their position of power, legislators may actually believe that they, backed by courts and police, can order the wage rates of their constituents to rise. Many legislators, however, are known to favor such legislation because of its stifling effects on the productive efforts of their competitors. The representatives of industrial labor in the northeastern United States are fervent advocates of ever higher minimum wages because they are fully aware of the consequences. The wage mandates are meant to hamper less productive competitors especially in the South, which hopefully provides more employment for their constituents. Labor legislation in this sense is an indication of class and regional economic warfare that is waged by transfer politicians.

Union Policies

In a broader sense, "structural" unemployment may also be the product of ideas and policies that guide labor unions. After all, it is the very function of unions to exact higher pay for less work, which raises labor costs and reduces the demand for labor. The unemployment it creates is "voluntary" in the sense that society voluntarily creates the union phenomenon; it is involuntary for the individual who is cast out of productive employment. Unfortunately, most sources of information never touch on this structural unemployment.

The U.S. Department of Labor may provide detailed information on males and females, whites and blacks, and many other interesting criteria, but it steadfastly ignores the most important employment factor: union membership. It may report on severe unemployment in Michigan, Ohio, Pennsylvania, and New York, and ignore the fact that the depressed industries usually are unionized industries: automobile, coal, steel, and transportation. In fact, the mass of detailed information seems to be designed to obscure the fact that the strongholds of labor unions also are the centers of unemployment.

Structural unemployment may also be "purchased." That is, we may speak of "purchased" unemployment when the institutional benefits of unemployment, i.e., the state compensation, supplementary benefits by company and union, healthcare benefits, foodstamps and other gratuities, induce some people to

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prefer unemployment over gainful employment. Surely, many people can be induced to withdraw from the labor market if the price is right. Most people may withdraw when the benefits equal or exceed the compensation for labor exertion. Millions actually withdraw when the subjective value of the free time granted by unemployment together with the transfer benefits exceed the subjective value of the wages earned by labor exertion. When seen in this light, the transfer society is "purchasing" a given unemployment rate. Its willingness to grant benefits is an important factor affecting the unemployment rate.

The Range of Skills

The "underlying forces" do not cause unemployment. Not the industrial demand for certain skills, nor the demographic composition of the labor force, nor the behavioral response of the population can be charged with the gradually rising unemployment rates. It is erroneous to contend that "the wider the range of skills among the labor force, i.e., the greater the disparity among workers' ability to perform in the work place, the more likely it is that those at the bottom end of the skill distribution will be unable to find employment." (Gallaway and Vedder, p. 4)

If it were true that a widening range of skills in a given labor market would cause unemployment, it would follow logically that the technically most advanced countries would suffer the highest unemployment rates. The United States, Germany and Japan would be not only the centers of high technology but also of high unemployment. Such a conclusion belies the facts. The unemployment rate in some less developed countries, such as Mexico and many others, exceeds by far that of the technically more advanced countries. Unemployment in every country is a cost phenomenon; it has no relation to the given range of technological knowledge and skills. Workers everywhere acquire most of their skills on the job. They are learning continually as they are advancing slowly from young trainees to senior craftsmen. They are fully employed all their lives as long as they do not price themselves out of their respective markets. This is true for the most skillful worker as well as the most inept.

Learning may be a dangerous weapon and apt to hurt its master if he cannot use it. In many societies the costs of education and training are practically free to the trainee, which gives rise to a massive demand for training and immense misallocation and waste of labor. Free education and training tends to give rise to false hopes and expectations, which, in the end, may bring disappointment and discontent.

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The Demographic Mix

Among the various determinants of structural unemployment the changing demographic mix is said to play an important role. Over the years there has been a relative increase in the number of females and teenagers in the labor market, people with relatively little skill. They are reported to have driven up the amount of employment and the rate of unemployment. According to Gallaway and Vedder, "among the 16–19 group (both sexes) the civilian labor force participation rate rose from 44.0 percent in 1960 to 58.0 percent in 1979. Among females, aged 20 and over, the increase was from 37.6 percent in 1960 to 50.6 percent in 1979." (p. 12) If the level of skills actually affects the rate of unemployment, it follows that the influx of young people with few skills must bear some of the responsibility for rising unemployment.

Actually, the level of productive skill merely determines individual productivity and labor income; it has no bearing whatever on employment and unemployment. Surely, unemployment is more concentrated among females and young people who are congregating in white collar and service areas. They are flocking to these areas for a great number of reasons. Union rules and regulations may bar them from industrial employment, which makes white collar and service areas the only entrance gates to the labor market. As millions of females and young people are streaming through those gates, wage rates tend to be relatively low. They may approach the minimum allowable rate, the legal minimum. When they fall below this rate unemployment raises its head. It rises or falls, always reacting directly to the excess of the legal rate over the market rate.

The high rate of unemployment among females and young people also reflects a large component of "purchased" unemployment. After all, the difference between income from work and unemployment benefits may be minimal. When it is smaller than the value of the free time gained by unemployment it is reasonable and economical to seek unemployment. Many young people attach extraordinary value to free time that can be devoted to so many exciting pursuits.

Behavioral Responses and Other Differences

Structural unemployment is said to reflect the basic attitudes of people seeking work. Man's frame of reference, outlook, disposition, temper, and morale may change over time. His ethos of labor may change, which may affect the usefulness and productivity of his labor, and thus also the market price. Wage rates rise or fall depending on the contribution made by labor to the produc-

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tion process. How do they affect unemployment?

Behavioral differences, even ethnic differences, may explain differences in income and wealth; they may have a bearing on unemployment only in conjunction with government wage mandates and transfer temptations. That is, differences in the ethos of labor, for any reason, do not cause unemployment unless they encounter the given obstacles: false pricing of labor backed by brute force, and benefit temptations giving rise to "purchased" unemployment. In his offer of labor, every individual, regardless of his ethnic background, faces price and cost considerations. He can find employment as long as he does not become ensnarled in one of the "safety nets" spun by government.

It is unnatural that man should be unemployed. To proclaim a "natural" rate of unemployment is most unnatural.

—FOOTNOTES—

[1]U.S. Government Printing Office, Washington: Dec. 17, 1982, 11-8030.
[2]*Ibid.*, p. 2.
[3]*Ibid.*

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William Noland

Preferential Hiring Revisited

DISCRIMINATION is familiar behavior. We discriminate all the time—in the goods we buy, in the candidate we support at the polls, in the religion we prefer, even in choice of marriage partner (where options exist!). Children discriminate when they issue invitations to their birthday parties. Teachers, in awarding grades, must discriminate between good and inferior work. And the list goes on. Most discrimination is completely justified; in fact, much is morally required.

The dictionary definition of discrimination is neutral, but current social and political climates have done a good job of changing that. Now the predominant meaning is non-neutral, even pejorative. In this atmosphere, those who discriminate are subject to complaints, reproach, even condemnation. In race relations, we are being told to practice reverse discrimination in order to compensate for the evils of the past, the exploitation of blacks by whites. But if one takes "discrimination" in a deprecatory sense, to include wrongful or unjustified treatment as part of its meaning, then "reverse discrimination" must likewise imply wrongness because reverse direction wrongness is still wrongness.

Disagreement on the merits of reverse discrimination is widespread and may ultimately prove untamable. It is a debate that transcends earlier debates on racial segregation and subordination. The last two did not attack our moral beliefs as reverse discrimination does. They called on us to condemn and denounce such morally corrupt attitudes and behaviors as lynchings, hatred and hypocrisy, and to stand

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up for the preservation of elementary liberties—not an impossible assignment as judged by the progress we have made in these directions. But reverse discrimination digs much deeper.

Here we are called on to find answers to more basic questions about social justice and human rights. Informed people, open-minded to arguments on both sides, willing to devote substantial time and energy to careful examination of the moral and legal merits of the problem, may differ stoutly on the rightness of preferential hiring. It raises many difficult questions. Since we have not had good success at predicting and weighing the future effects of alternative social policies, must we not approach the solution of this particular problem with extreme care and healthful skepticism? Are the broad principles of justice with which we must wrestle sufficiently clear and do they have defined limits? Is the degree of precision we are able to achieve likely to be sufficient to justify the arbitrariness we may find ourselves having to employ? Is the job of finding pertinent established and universally accepted principles likely to be too difficult?

One view of reverse discrimination, commonly called the social utility approach, argues that the public interest, the "common good," the well-being of society overall, hinges on our providing ways and means to improve the lot of blacks in our society, resulting in the creation of motivating role models for the most deprived of all blacks, the young ones. Opponents of this position question the benefit-to-cost ratio of such a policy and point to other ways to reduce racial stereotypes, promote integration, and improve the economic condition of blacks.

Distributive Justice

A second approach to reverse discrimination speaks of distributive justice. Here our society is called on to increase opportunities and improve conditions of the disadvantaged, those toward the bottom of the socioeconomic-political spectrum, who themselves do not have the resources necessary to alter their life chances. Here is an implied emphasis on improving the welfare of blacks. To remedy this situation, the argument runs, there should be suspension of equal opportunity until the disadvantaged catch up; in short, unequal opportunity favoring blacks should be mandated.

Opponents call such a program charity, that while the society should help the needy, demanding relief as a right is unacceptable. Furthermore, ask these opponents, what kind and amount of redistribution is due to whom, and under what circumstances? While some re-

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distribution may be commendable, would we not be placing the burden of achieving such a goal unequally, too heavily on white job applicants disadvantaged by being in competition with blacks who are being shown preference? Under such an arrangement, the expression "equal opportunity employer" would be a gross misrepresentation, for in reality we would have an "unequal opportunity employer favoring blacks." Again, reverse discrimination is still discrimination.

In an interview reported recently in *U.S. News & World Report* Frank Askin, General Counsel, American Civil Liberties Union, was asked: Is reverse discrimination justified? Yes, said Askin, or else "we doom the nation to another era of racial strife." Racial quotas are necessary in order not to diminish the opportunities which are now being opened to members of minority groups. Advancement opportunities for whites will diminish but that is the price we must pay.

Eugene Rostow, Sterling Professor of Law and former Dean, Yale University Law School, was asked the same question. His reply: No, it is using "an immoral, illegal means to achieve a very good end." Reverse discrimination is not the fastest way to help minorities recover from years of mistreatment. If you take a lot of people who really can't do the work, as you would have to do under a quota system, you find that many of them drop out. "They are bitter, bruised and badly hurt by their experience."

Quotas or Goals?

A major reason for citing the above opinions, in addition to their obvious utility in pointing up two strikingly different points of view, is that the word "quota" appears in both. So often "quota" is confused with "goal." The two are quite different.

In both of the approaches to reverse discrimination briefly described above—social utility and distributive justice—this difference is important. A quota sets both a ceiling and a floor. If there are not enough qualified workers to meet a quota, some who are not qualified will be added. If there are more qualified than the quota allows, some who are qualified will be rejected, usually on the most arbitrary and irrational grounds. Even when employment circumstances change, the quota is unlikely to be altered, for it was initially set for reasons unrelated to personnel supply and demand. Even the late Justice William O. Douglas proclaimed that there is no way to reconcile a quota system with the Fourteenth Amendment mandating equality of opportunity.

A goal is altogether different: both its underlying reason and its

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content reflect human circumstances. The purpose of a goal is to include, but not exclude. If there are too few persons to meet the goal, it will not be filled. However, if, in the future, the pool of qualified persons rises above the goal, it can be exceeded justifiably. According to J. Stanley Pottinger, former Assistant Attorney General in charge of the federal Civil Rights Division, the key word is flexibility. "A goal serves as an objective to be reached, but unlike quotas, a goal should not become carved in stone. Changing circumstances beyond the employer's control, or estimations which prove through experience to have been unrealistic when made, can impair an employer's ability to meet a goal regardless of his good faith efforts to do so."

Compensatory Justice

Now we come to what is likely the least publicized but potentially the most troublesome of all approaches to reverse discrimination: compensatory justice. Here the focus is on preferential hiring as a way of compensating blacks for the "wrongful benefits" whites have enjoyed at their expense. This raises the question: To what extent does preferential hiring of some threaten the *basic right of equal employment* of others?

If a community owes compensation to blacks, does each white member, W, of that community owe each black, B? The answer here, where the community is considered distributively, is no. Here the syllogism we studied in introductory logic would run:

Major premise:	Each member of the community owes B
Minor premise:	W is a member of the community
Conclusion:	Therefore, W owes B

This begs the question, for the major premise is precisely what is in dispute.

Nor does the community taken corporately "convict" W, for liability generally is not something born of mere group membership and is not distributed to individual members in a complex organization.

Of course an individual may owe his fair share to his community, but there are recognized criteria for determining the amount (e.g., property evaluation for tax purposes). But what is the white job seeker's fair share? All this smacks of distasteful anonymity, one's being accused of owing somebody something without the chance to defend himself. For contrast, it reminds one of the nature of a fair trial, sacrosanct except for genuine emergency situations, that a prosecution witness cannot give testimony anonymously because it would violate the defendant's right to confront and cross-examine his accusers. So another question becomes: Is not one's right

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to consideration for employment as basic as his right to a fair trial?

In 1969, James Forman presented the Black Manifesto to American churches, demanding that they pay blacks $500 million in reparations (later other institutions were asked for reparations also). Forman's argument ran as follows: For three and a half centuries blacks in America have been "exploited and degraded, brutalized, killed and persecuted" by whites; that whites have been guilty during this time of, first, legal slavery, then legal discrimination and forced segregation, resulting in their extracting enormous wealth from black labor with little return to blacks. We need to raise blacks to the level they would have now if they had not been so subjugated. It is the fair way to compensate for the sins of the ancestors of present-day whites. (Perhaps there was the concealed belief here that it would also be the most effective way to redress wrongs because it would strike at one of the most sacred of possessions, pocketbooks!) These facts, Forman argued, justify a demand for reparations on a massive scale.

While the Black Manifesto charges wrongs to white *America* rather than white *Americans*, it is important to note that if the federal government mandates a general policy of preferential hiring, white job applicants will be asked only if they are white, not if they have ever wronged blacks. So here we would have the assumption of vicarious liability, i.e., that work performed or deprivations suffered by one person have produced results accruing to the benefit or advantage of another. But how does a white take care of these assumed wrongful benefits? By forfeiting his right to equal employment consideration? By having the government mandate that blacks must be accorded preferential hiring rights?

Let us consider a simple business transaction where obligations and implications parallel a white's status under preferential hiring. Suppose Alexander, A, and Brown, B, are next-door neighbors, living in white houses with identical architecture. A goes on vacation but before he goes he pays a contractor to paint his house—again white, just as originally painted. An "enemy," C, learns of this business transaction and that B went on vacation at the same time. So C switches the residence numbers of plates stuck in the adjacent lawns: 316 and 318 exchange places. The painters paint the wrong house. The mistake is discovered when A returns; somebody owes him compensation. Is it B? Is it the contractor? Obviously it is C, but his identity is unknown. The house cannot be "unpainted," so the benefit to which B is not entitled cannot be taken away without dis-

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turbing his other rights. B has no obligation to A: since B's house did not need painting, he cannot pay A without incurring a loss. He benefited from a wrong, to be sure, but he had no choice in the matter, no way of avoiding the benefit. So the premise, "He who benefits from a wrong must, willingly or unwillingly, help pay for the wrong" is false; it should read, "He who knowingly and willingly benefits from a wrong must help pay for the wrong."

Now let us return to the white applicant's case and see the parallel to this one. Preferential hiring takes away the white applicant's undeserved benefits by taking away his right to equal consideration for employment. We must ask not whether he benefited from wrongs done to blacks but whether he deliberately took advantage of the benefits or refused to avoid them when he easily could have. This may be true of some whites—this deliberately taking advantage—but conceivably not all.

There are, of course, situations where imputing vicarious liability is in order—but in all such cases the person made liable possesses some control that would enable him to avoid liability. Parents, by exercising control over their children, can escape liability for their children's debts by seeing to it that the children do not incur unwanted debts. Criminal law makes a participant in a felony liable for the criminal acts of his co-participants, but one can avoid risk of such liability by shying away from felonious behavior. But whites in the past, in their employment relationships with blacks, did not realistically have such avoidance behavior available.

Early Influences

A further word in defense of whites in the past is in order. During the time when discrimination against blacks was pervasive, any attempt to avoid the taint of advantage would have been difficult if not impossible; in many instances the price paid actually would have been loss of employment. Whites had a competitive advantage over blacks because their early socialization, *beyond their control,* had given them a more secure level of self-respect and self-confidence. Young children have no control over their early socialization; by the time they are able to understand and evaluate social behavior the basic features of their personalities are in place. In fact, much the same can be said about basic educational advantages, e.g., reading and mathematical skills. Even in adulthood, membership in a community defines and reinforces one's self-respect and self-confidence. So it is hard to see how injustices done to blacks could have been avoided by individual whites.

It seems likely that some of the

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opponents of preferential hiring—perhaps even a substantial number of them—refrain from absolving all whites of complicity in the evils of the racist system, and even accept the idea that blacks are entitled to some compensation in our society. However, they may at the same time be concerned that preferential hiring lies outside the realm of acceptable means for compensating blacks because it violates a basic human right, that of equal consideration for employment. There are two crucial and related points here: personal guilt is necessary for the creation of personal obligation, and benefits accruing to one from someone else's wrongdoing do not obligate.

One of our worst traits has been the imputing of vicarious liability to our "enemies." We attribute to all in a group the guilt of one of its members. Perhaps the most celebrated case is the blood feud between the Hatfields and McCoys, which raged for thirty years (1865–1895) and left twenty-seven dead. In such inveterate strife, when first a member of one family kills a member of another, the shooting begins in earnest; every member of each group immediately becomes a suitable object of retaliation by members of the other. Here we have the nasty application of "collective responsibility" and "guilt by association," which, fortunately, we succeed in rejecting most of the time. Opponents of preferential hiring suggest that we do it here.

While there may be a place at times for some limited principles such as vicarious liability, we must proceed with utmost caution. So far our society has subscribed to a moral code that opposes the ascription of liability and guilt to one who could not avoid what he did. If we ever arrive at the point of rejecting this view, we will have succumbed to what we have been trying to avoid: stereotyping and tainting, sources and propagators of racism itself.

IDEAS ON LIBERTY

F. A. Harper

WHEN discrimination is not allowed according to one's wisdom and conscience, both discrimination and conscience will atrophy in the same manner as an unused muscle. Since man was given these faculties, it necessarily follows that he should use them and be personally responsible for the consequences of his choices. He must be free to either enjoy or endure the consequences of each decision, because the lesson it teaches is the sole purpose of experience—the best of all teachers.

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Dennis Bechara

Stability and the Free Market

AN IMPORTANT DIVIDEND of the market economy is the prospect it offers of a peaceful and orderly society. Without the stabilizing influence of the market, democracy and representative government would disappear. War, or the threat of its occurrence, breeds authoritarianism and intolerance. Only under peaceful conditions will there be proper incentives for the creation of wealth.

When the political environment is unstable people tend to look to government more for personal security than for freedom. This has happened in many countries in many ages, and the consequent disappearance of the market order in those countries has only tended to strengthen the government's hold over the population. Such governments attempt to direct the working of the economy, either through outright nationalization of the means of production or by enacting rules and regulations which control the market.

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The stabilizing influence of the free market may be observed in the international division of labor. As people engage in free trade internationally, there is a tendency for individuals and countries to specialize in the production of certain goods. Consequently, free trade establishes an interdependence between countries, as each looks to the production of other countries to help meet its needs. There is thus an incentive for the maintenance of peace.

Since the free economy depends upon social cooperation and the progressive division of labor, it follows that peace is a precondition for capitalism. As Ludwig von Mises stated, "The progressive intensification of the division of labor is possible only in a society in which there is an assurance of lasting peace. Only under the shelter of such security can the division of labor develop. In the absence of this prerequisite, the division of labor does not extend beyond the limits of the village or even of the individual household." (*Liberalism,* p. 25)

Consequently, the market order promotes peace among nations. As free trade increases the world's productivity, it is in the self-interest of nations to refrain from aggressive behavior. When governments control substantial sectors of the economy, on the other hand, this leads to economic nationalism, which increases the possibility of conflict.

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Before the advent of the free economy, most social relationships were based on one's heritage or membership in a particular class. Serfs in the Middle Ages, for example, were attached to the land, and it was practically impossible for them to escape such restrictions. Grievances often led to violence. A child's heritage is of less significance in the free economy. True, the influence upon a child in the home is of utmost importance, but each family is free to choose the values it deems most appropriate. In eliminating institutions that granted privileges on the basis of birth, the free economy has promoted social stability and limited this source of conflict.

Voluntarism

Voluntary activities are encouraged within the free market. Contracts are the quintessence of voluntary relationships, and a body of law has evolved in order to reinforce their validity. No significant economic activity could be accomplished if long-term contracts were unenforceable. So there is this further incentive to maintain peace and stability.

Another characteristic of the free economy is that it promotes self-responsibility, insofar as it assures a correlation between effort and remuneration. As effort is rewarded in proportion to its utility to consumers, a work ethic is fostered.

Whenever market forces have been allowed to operate, one of the consequences has been an unequal distribution of income. People's abilities and ambitions vary, and consumers value certain goods and services over others. Those people who are best able to identify the opportunities to satisfy consumer demand are rewarded accordingly. When the government attempts to alter this arrangement, economic incentives are reduced and political considerations assume greater importance. The potential for strife and conflict is heightened as people recognize that they may improve their material position not by pleasing consumers but by obtaining political favors. And political favors usually mean special privileges or subsidies at the expense of the population at large. Government thus grows out of bounds as the market is diminished.

The preservation of peace is one of the great virtues of the market order. The market gives neither cause for war, nor gain from it. War is destruction, and people who participate in wars lose both spiritually and materially. Even if a country is victorious in war, if the means of production are in private hands, the acquisition of more territory does not enrich the country's citizens. If the means of production, on the other hand, are publicly held, then governments will have an incentive

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to plunder other countries in order to seize their natural resources and factories. This was one of the reasons Nazi Germany was so aggressive, and this is partly why Soviet Russia has an incentive to expand its sphere of influence.

Separation of Power

The free economy disperses power in many centers and it provides countervailing influences which in turn stabilize a pluralistic society. The alternative to the free economy, on the other hand, concentrates power in the state, weakening the individual's position in society. It is of no use to claim that a constitution or a bill of rights will guarantee our freedom if the government controls the means of production. This is so because as governments control the economy, they will delegate power to bureaucratic agencies. These administrative agencies, however, are not accountable to the public.

Since the legislative branch of the government cannot foresee every possible course of action which may be required of administrative agencies, it must delegate broad powers to them. This in turn weakens the rule of law, because the agencies will not have specific limits defined beforehand; rather, the agencies will legislate their own brand of economic and social justice according to the prevailing notions of the time. This development thus breeds conflict by promoting political action as the means to improve one's economic position.

Government, the monopoly of organized force, must be limited if there is to be freedom from its coercion. The free economy permits the existence of liberty because it does not allow the state to attain more powers than are necessary to keep the peace. By limiting the power of government to the rule of law, the free economy restores a degree of predictability to the government's actions, which in turn is a shield from arbitrary power. By broadening the areas within which individuals may act privately, the free economy permits the blossoming of each person's potential.

Competition, which is enhanced by the free market, raises productivity by rewarding those who most efficiently allocate scarce resources. But besides raising productivity, competition has an additional advantage—it encourages individual growth. As the late Leonard Read so frequently said, "The art of becoming is composed of acts of overcoming." It is precisely by overcoming obstacles that we are able to negotiate the different stages of growth, in open competition. And the free economy, by creating the framework of peace, cooperation and stability, insures the survival of representative government—a worthy achievement of any social order. ⊕

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Dean Russell

The Source of Rights

THE prevailing justification for governmental action in the United States today is this: The desires of the majority, as determined by universal and secret ballot, shall become the law of the land. And once the vote is in, everyone must obey, including those who think the law is immoral or economically destructive. Even if a person thinks the law violates individual freedom and the basic human rights of every person, he must still conform. Here are three examples of this situation currently in force.

1. Some hospital administrators think abortions are immoral. Even so, abortions must still be accommodated in their hospitals. If the administrator refuses, the penalty for frustrating the legal right of a woman to have an abortion in a hospital open to the general public will be the loss of essential funds and certification for the hospital. This will result in the almost-certain demise of that particular hospital.

2. One of the few economic principles accepted by economists of all persuasions is that tariffs cause higher prices, with a resulting decrease in goods and services. Even so, we economists (along with everyone else) must conform to that costly measure in practice, or suffer additional penalties as law-breakers.

3. If the idea of human rights has any validity at all, surely the most fundamental one is the right of every peaceful human being to his own life. Yet the majority of American people have voted time and again to give to our government (the mecha-

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This is one of a series of articles examining current interventions of the welfare state in the light of warnings from the French economist and statesman, Frederic Bastiat (1801–1850).

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nism we use to enforce the collective will) the right to sacrifice that life on a battlefield of its own choosing.

Since the majority of people claim they have a right to use legal violence to compel dissenters to conform to those laws (and thousands more just like them), surely they should feel some obligation to justify their position with a rationale more acceptable than, "There are more of us than there are of you; we're bigger."

Further, when there's a prior law (constitutional or common or statute) that interferes with the current desires of the majority, then that law can be repealed in precisely the same manner the new law is passed, i.e., by majority vote in the customary way it's done in our particular form of democracy and representative government. While our unique Constitution (along with tradition) can delay the popular will, it can't stop it.

Ask anyone—teacher, preacher, editor, or public official—how we *should* determine what is (and what is not) a proper function of government. The answer is always, "Why, by a democratic vote—the *American* way." If there's any other generally accepted way to determine collective actions, I'm unaware of it.

This doesn't mean, of course, that this philosophy of government causes the minority (the individual) to accept the decision of the majority as right or just. And certainly it doesn't cause us to accept it as final. In fact, this process of majority-rule automatically encourages the losers to regroup and strive again to become a majority—and then, in turn, to impose their desires on the former victors. While each group always claims "right is on our side," neither is in a sound position to make that claim—at least, not as long as each group is striving to impose its will on the other group by force of law that's based on nothing more acceptable than sheer numbers.

This battle is never-ending. It's fought on the local level, the state level, the national level, and the international level. And it will continue to be fought on all levels everywhere until this vital issue of individual rights and group rights is based on a more acceptable and fundamental principle than the law of large numbers.

Individual Rights

In truth, if it's to be effective, the issue must be settled between persons in the smallest possible unit—just two human beings deciding together what rights each has as an individual, what rights the two of them have collectively, and the source of those individual and collective rights. Until that hoped-for accomplishment is in place, however, we must continue to remain constantly alert for those persons

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(even the well-intentioned ones) who are trying to use the law to force you and me to conform to *their* viewpoints. And please remember that those persons are to be found in Washington rather than in Moscow. While the Russians are truly a threat to our freedom, it's a threat of another kind.

In our heated discussions of this issue of "rights," all of us actually do pay lip-service to the idea of rights for the individual, i.e., we constantly recite the word. But almost never do we use the concept of individual rights to determine the validity of collective rights.

You'd think that would be the logical starting point. But when more than two people are involved, it seems we just call for a show of hands—winner takes all. The losers then immediately prepare to continue the battle in one way or another until *they* finally become the majority.

And why not; for once you move away from the idea of individual rights to collective rights, what criterion is left except the law of large numbers? The only principle I can find there is that, mathematically, 51 per cent is larger than 49 per cent. There's not even one individual right to be found in that concept.

But since this law of large numbers (democracy in action) is the only rationale we've ever been taught for determining proper governmental actions in any area, it's not surprising we accept it without undue protest. We simply don't know any other way to do it. And in the areas of our most heated disagreements, e.g., taxing and spending and other matters affecting our incomes, most of us appear to vote automatically *against* paying higher taxes and vote *for* getting more subsidies of some kind.

Organized Plunder

As Frederic Bastiat said in *The Law*: "When plunder is organized by law . . . all the plundered classes try somehow to enter—by peaceful or revolutionary means—into the making of laws."

If the American people (you and I and our neighbors) can legally get money merely by voting for it, most of us will do so. Even if some of us are hesitant to vote subsidies directly to ourselves, we feel real good when we do the same thing indirectly by voting for more government housing, education, and medical care for needy people. Whether we say so or not, we know full well we'd have to do it with our own money if the government didn't do it.

This process will continue with increasingly destructive consequences until one of two solutions occurs. First (and most likely), a would-be dictator will seize power by declaring an emergency and re-

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fusing to submit his right to rule to the uncertain outcome of another election that involves an opposition party. You need only glance casually around you to discover scores of nations where that's happened. Or second, we'll finally devise and accept a better rationale for collective (governmental) action that's based on a principle more fundamental and permanent than a mere show of hands.

Life, Liberty, Property

I'm convinced that Frederic Bastiat devised that "better rationale" for group action in his writings in 1850. In his short book devoted to this issue, *The Law,* he offers a clear and simple method for determining the justification of any collective (governmental) action. He starts with the individual human being and never deviates from that universal base.

First he identifies the rights possessed by each and every person. He follows this with a logical explanation of where those individual rights come from. Finally, he demonstrates how the individual can logically and legitimately and morally retain and use his individual rights in harmony with his fellow humans in a viable social arrangement (government) designed to advance the well-being of everyone.

Bastiat begins by stating that every human being has three basic rights: (1) The right to his own life, (2) the right to be free to develop whatever faculties he's born with, and (3) the right to the use of his own property.

These three rights come from the creator of life itself. While Bastiat used the conventional word "God," the word "nature" serves his concept just as well. The essential point he was making is that these rights inhere in each individual at birth and thus they "precede all human legislation and are superior to it."

Not surprisingly, Bastiat was familiar with our own Declaration of Independence, including the first draft of that "natural rights" document that referred to life, liberty, and property. Perhaps that's where he got his idea. At any rate, it's certain that both our Declaration of Independence and our Constitution greatly influenced him.

Bastiat continued to develop his own version of that familiar "natural rights" idea as follows: "Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place."

Bastiat's objective was to establish the logical principle that these individual rights come from a source *other than government.* I accept his principle, and will develop as best I can a rationale to support it.

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It doesn't require profound thinking to reach the obvious conclusion that government did not (and cannot) create human beings and our faculties. And while the collective force of government can indeed protect liberty (as well as suppress it), this legal force can't very well create liberty in the first place. Necessarily, that concept or condition or aptitude must pre-exist as an idea or desire or faculty within the minds of individuals. Otherwise we individuals wouldn't even be discussing it; it just couldn't come up.

Thus there's no problem concerning the identification and source of the first two of Bastiat's three rights. But the third one (property) does indeed generate considerable controversy. Unfortunately, Bastiat didn't spell that one out as clearly as he did the other two. So, based on my agreement with his idea that all three of these rights are so inextricably mixed that they necessarily stand or fall together, I'll here try to develop it in harmony with what he did say.

Of course, property includes liquid assets (the form in which most of us prefer to keep it) as well as so-called real property. We're continually shifting our property from one form to the other. And when either form is threatened by governmental action, there's no long-term safety to be found in the other. The idea of "property rights" stands or falls as a concept; it's not based in the long run on the mechanical form in which assets may be held. Considerations of that nature are mostly for investment purposes, and thus are not a part of this study of man and his government.

Government Is Not Creative

While our government can certainly legally seize our property or tax it away from us, there's no possible way it can create property in the first place. Obviously the land and all its natural resources were here before those settlers arrived at Jamestown. And the land that's been appropriated by our government for any purpose has necessarily been taken (justly or unjustly) from human beings who claimed it as their own. (Even the claim made by our government to a slice of the uninhabited moon wouldn't have been possible unless our officials had first appropriated far more valuable property from its owners here on earth to get there.)

And there's no recorded example of our government creating permanent wealth by the printing of money. In fact, the officials of government invariably get around to using that process as a subtle form of indirect taxation, i.e., they eventually just print it up and buy goods and services from us producers before we finally realize we're increasingly getting more of nothing for

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something. There's just no way our government can transfer a product or service to one person without first taking it away from another person, directly or indirectly. While "defense" by government is a desirable service, even it is still a cost that must be paid for by us producers who are protected by it.

That's the best explanation I can offer of Bastiat's statement that life, liberty, and property preceded legislation—and that their prior existence generated laws, not the other way around. I find the idea persuasive. For it's clear to me that unless you hold the belief that man is motivated by "swarm instinct," it's illogical to argue that the basic rights of man come from government, i.e., from the group or swarm or anthill.

In truth, since you (the reader) can argue and hold a belief, it's simply impossible for you to belong to a swarm, even if you wanted to. While you may demand subsidies and protection from the group, the impetus for your action comes from your own mind *before* you take action. That obviously has to be so, and it's sad indeed that so few people realize its implications in support of the idea of rights coming from a source that's before, beyond, and superior to our government.

Of course, Bastiat didn't invent the concept of the "natural rights of man." That concept of human rights inhering in each individual is older than recorded history. But I'm confident that Bastiat's clear and logical development of the idea of basing collective rights strictly on pre-existing individual rights will prove to be his major contribution to political economy.

What Is Law?

After identifying the rights of man and the nongovernmental source of those rights, Bastiat moves on to his definition of government and the legitimate source of governmental or collective rights. "What, then, is law [government]? It is the collective organization of the individual right to lawful defense."

"Each of us has a natural right . . . to defend his person, his liberty, and his property. These are the three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of the other two. For what are our faculties but the extension of our individuality? And what is property but an extension of our faculties?

"If every person has the right to defend—even by force—his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right—its reason for existing, its lawfulness—is based on individual right. And the common

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force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force—for the same reason—cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.

"Such a perversion of force would be, in both cases, contrary to our premise. Force has been given to us to defend our own individual rights. Who will dare to say that force has been given to us to destroy the equal rights of our brothers? Since no individual acting separately can lawfully use force to destroy the rights of others, does it not logically follow that the same principle also applies to the common force that is nothing more than the organized combination of the individual forces?

"If this is true, then nothing can be more evident than this: The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause *justice* to reign over us all.

"If a nation were founded on this basis, it seems to me that order would prevail among the people, in thought as well as in deed. It seems to me that such a nation would have the most simple, easy to accept, economical, limited, nonoppressive, just, and enduring government imaginable—whatever its political form might be.

"Under such an administration, everyone would understand that he possessed all the privileges as well as all the responsibilities of his existence. No one would have any argument with government, provided that his person was respected, his labor was free, and the fruits of his labor were protected against all unjust attack. . . .

"But, unfortunately, law by no means confines itself to its proper functions. And when it has exceeded its proper functions, it has not done so merely in some inconsequential and debatable matters. The law has gone further than this; it has acted in direct opposition to its own purpose. The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force at the disposal of the unscrupulous who wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder into a right."

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Well, there you have it—the clearest and most logical explanation of the source of collective rights you're likely to read. Every other justification I've heard for governmental action is solidly based on the concept of some one (or some group) imposing its will on other peaceful persons—"for their own good," of course. But when you examine the laws in practice, you'll find only one absolute: A group of people are using the collective force of government to make some people do what they don't want to do, or are preventing them from doing something they want to do.

The claim of the imposers that the process is for the good of the imposed-upon is seldom obvious in practice. True, measures for collective defense can't automatically be called plunder. And while there may be other exceptions, the entire charade seems to be mostly for the glory and gratification or profit of the imposers themselves. That's why Bastiat called them "plunderers"—legal plunderers but still plunderers.

"Frontier Government"

Bastiat could quite easily have gotten his basic idea of the source of collective rights from reading about "frontier government" in the early history of the United States. At any rate, we know Bastiat could read English well, was a voracious reader in the area of political economy, and was familiar with the book, *Democracy in America,* written by his fellow countryman, Alexis de Tocqueville, who traveled so extensively in the United States in the 1830s.

In any case, Bastiat's theoretical development of the source of collective rights corresponds reasonably well to the practice of it on the western frontiers of the United States during much of the Nineteenth Century. We may look to that "frontier setting" to demonstrate how it did work then, as well as how it might work again—if we ever decide to return to the practice of individual human rights instead of the current mania for collective rights based primarily on the law of large numbers.

THE LAW

by Frederic Bastiat

Written in 1850, translated by Dean Russell in 1950, still one of the best arguments for limited government.

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Ridgway K. Foley, Jr.

The Illusion of Certainty

MANKIND seeks certainty. Arguably, this quest derives, at least in part, from the magnificent and observable order pervading the universe. To fallible man, this illusive certainty provides the allure of security, avoidance of risk, the easy life and guaranteed attainment of personal goals. Thoughtful perception and insightful analysis reveals the fiction attendant upon this search: While the universe indeed exists in a state of perfect order, it is populated by individuals possessed of free will, fully capable of determining a course of conduct inharmonious with the law of nature. Consequently, imperfect people in a perfect world forecast fallibly and make mistakes; human actors approach certainty most nearly when they act in accord with the natural law of moral consequence. However, to the extent that an individuals' conduct or desired consequence depends, in part, upon discerning and propitious action by other persons, such search for certainty proves elusive almost to the point of impossibility.

Those individuals committed to the freedom philosophy often recognize and deride the liberal or statist who hankers after the supposed assurance of perfection in a world inexorably beset by the results of sinister men dealing inhumanely with their fellows. Guaranteed annual income programs, universal suffrage, mandatory public education, affirmative anti-discriminatory rules, and all-embracing

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regulatory codes of every kind and kin, among a plethora of examples, demonstrate this liberal miasma. The social engineer believes in the fable that an elite directorate elected by a universal majority ineluctably possesses the prescience, analysis, and motivation to order all human conduct in a manner most just and efficient.

Unfortunately, few defenders of the moral private property order observe the mote in their own respective eyes. The voluntarist rightly recognizes the error of the socialist way; few take note and admit to a comparable misapprehension of their own. This essay proposes to unmask several common misconceptions prevalent on the right side of the American political spectrum in an effort to demonstrate that alien methodology and reflection does not belong exclusively to the statist or absolutist left.

The minority who follow the freedom philosophy attain and exhibit varying degrees of intellectual sophistication in their eternal journey. Some of the more obvious and deficient examples of panaceas offered currently to inhibit or erode the excesses of state power deserve at least cursory mention.

The Jury Nullification Doctrine

Ambiguous state constitutional theory and questionable legal conceptual history afford the basis of the doctrine that a common law jury may override judicial instructions on the law in order to reach a just result.[1] This concept partakes of the more general populist belief that a majority of the community, left to its own devices, will inevitably reach the proper political or legal decision.

The misconception, likely stemming from the foundations supplied by Jean Jacques Rousseau, errs significantly in its assessment of human behavior: Human beings, capable of seeking perfection, swerve from the proper natural order by virtue of a malevolent predilection to disharmony with fundamental moral law. Thus, a jury of peers may render its verdict upon irrational grounds; it may act out of envy, jealousy, fear or greed; it may do justice on one occasion and injustice upon another; it performs like the mill-run of us all, lacking particular virtue and insight. Indeed, a jury may very well behave like any other crowd, out of a peculiar madness which turns right action upon its head.[2] To entrust individual rights to a community jury is to rest civility and principle upon a slender reed.

Judicial Protection of Individual Rights

A related, ill-defined concept subsumes the judiciary as a repository of wisdom and purpose, existing as

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the ultimate defender of personal freedom. Adherents to this proposition seldom articulate their premises, but their basic belief appears from the course of action chosen to secure a desired result: The advocate persists in asserting a legal right, theory or doctrine with dogged determination, confident that if he receives a hearing before a judicial tribunal, the obvious and uncontradictable theory put forth will mandate full vindication of his position. Once again, the belief founders upon the shoals of reason posited from human nature.

Judges are selected from the average cut of society by a political process, and no amount of tinkering with the structure or the system will alter fundamental human frailty or counteract the natural law that political choice produces the least desirable officeholder. Drawn from the community of human beings, the judicial officer possesses no greater wisdom, morality or innate sense of fairness than do his neighbors. He may act sagaciously on some occasions, but he will err often.

Moreover, with exceedingly rare exceptions, judges secure substantial benefits from the plunder society and are, therefore, unlikely and inhibited defenders of human liberty. In addition, few if any courts comprehend and protect the freedom philosophy; judges fall prey to untoward beliefs and cliches of statist rule and act accordingly. To expect surcease in court is to ensure disappointment.

Organized Campaigns to Convince Your Congressman

A closely allied political theory exhorts the organization and use of pressure group politics for conservative ends. Modeled upon the political dynamics of the left, naive partisans are persuaded to conduct letter writing, telephone and postcard campaigns in an attempt to overwhelm legislators with an outpouring of righteousness. Once again, a superficial particle of truth leads to a grand gleaning of error. Socialist issue groups have secured significant benefits by coercive and mendacious political tricks; officeholders desire re-election—Potomac fever is a very real disease.

Unfortunately, the countervailing position cannot find fertile ground in the same fields: The vast majority of officeholders, and the vast majority of citizens, are wedded to the statist philosophy and beholden to the political larder; hence the left can market its position quite easily to its constituent legislators, while the right starts with two political strikes: An unpopular position and an unresponsive politician. Reliance upon the conviction and commitment of legislators to act correctly when provided with facts and reason results in genuine dismay.

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Direct Legislation and Control of the Political Process

The Oregon System, designed in large part by the inventive William Simon U'ren,[3] offered a populist solution to real or perceived inequities imposed by the standard legislative apparatus. A direct legislative system permits a fairly small number of citizen-voters to initiate a law, refer a legislative act to the people for approval, and to place on the ballot the question of removal or retention of an elected official.

In theory, the mass of voters possess an edge in common sense, and the direct legislative system acts as a check or restraint upon inaccessible, corrupt or ineffective legislators. In fact, those who elect the public officials form the same majority which will defeat any measure designed to increase free individual choice. Ballot access (often hindered by strict normative impediments) means very little without the votes necessary for final success.

Furthermore, if by chance a measure conducive to human freedom achieves passage, the statist majority still controls the machinery necessary to disembowel the interloper: Legislative circumvention, administrative oversight, and judicial obliteration all offer neat tools to restrict yearnings of free men and women. Populism awards little solace to the true believer in the freedom philosophy, for the essential premise of populist doctrine—the inevitably intelligent will of the majority—provides no protection to the minority, save that granted by the whim of those who set the agenda and make the rules.

The Constitutional Convention

The Scandinavian Realists label the constitution of a state a *grun'norm,* the essential rule of law against which all other rules and orders of that nation must be assessed and measured.[4] The United States of America presented one of the earliest successful examples of a written constitution, a constitution unique in its underlying premise (elucidated by the Declaration of Independence) that each individual possesses inalienable sovereign natural rights to life, liberty, and the pursuit of happiness derived not from the state but from the natural and all-prevailing order of the universe. Respect for personal, non-aggressive free choice provides the hallmark of justice in a free society. Despite the remarkable decline in personal liberty and the rapid encroachment of government, the United States still offers the one best remaining hope for avoidance of a coming Dark Age and the survival of a free society.

The obvious dangerous interventions by the state have called forth several conservative or voluntarist exhortations for the passage of con-

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stitutional amendments or the establishment of a constitutional convention to right wrongs perceived and to further limit the development of the mandate state. Balanced budget amendments, human life amendments, tax limitation amendments, out of abundant examples, all offer their particular (and ordinarily well-meaning) proponents. The advocates on the right express assurance that a constitutional convention in, say, 1987, can and will proffer sufficient insight, talent and wisdom to correct the ambiguities and mistakes of 1787 and reaffirm our dedication to liberty.

I dissent, not from some of the principles propelling the partisans of human liberty and the restricted state, but from the gullible suppositions which form the major premise of the proposals. The delegates to the constitutional convention of 1787 were truly remarkable and dedicated men; I see few today who approach their stature, and those few stand virtually no chance of selection to a 1987 convention.

What empirical fact or rational theory affords any proof that delegates to a proposed constitutional convention will differ in person or in thought from the abysmal lot who inhabit our state houses, courthouses and Capitol Hill? Furthermore, what legal or moral restraints would proscribe the delegates to a proposed convention from exceeding the assumed limitation of purpose (e.g., a single issue convention to consider a balanced budget amendment) and rewriting the remarkable document which sets the standard for our country?

Remember: The constitutional convention of 1787 broke faith with its selectors' purposes to consider amendments to the Articles of Confederation, and instead presented a brand new design! In addition, their predecessors in the First and Second Continental Congresses ploughed new and luxurious conceptual grounds by declaring and successfully acting out a right of revolution not necessarily in accordance with the desires of those who directed them to convene in Philadelphia. Given the proclivity of our society with its surfeit of rascals in high places, resort to a constitutional convention possesses an unacceptable risk of danger to the remaining fabric of our free society.

Tax Avoidance in Ten Easy Lessons

The outlandish growth of the tax assessment and collection apparatus, with its concomitant invasion of individual rights, has produced an astonishing array of theories designed to cut taxes and limit government in the process. The schemes presented to a credulous portion of the public range from the hare-

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brained to the astute: Imperfections in the adoption of the Sixteenth Amendment, the assertion that wages do not constitute income, the employment of "family," "pure equity" or "constitutional" trusts to avoid all taxation, and the contention that only gold and silver (not fiat currency) constitute money and taxable income, represent but four of a virtually countless number of variations. Promoters of particular theories parade about the country (when not abiding in jail or in civil court as a result of their positive-law transgressions), selling their hypothetical concepts from lecturn or bookshelf for $14.95 or some such nominal sum.

Again, the peddlers of tax escape nostrums (and most of their followers) miserably fail to differentiate between able theory and political reality. For example, legal and constitutional history provide substantial proof that the draftsmen of Article I, Sections 8 and 10, of the Constitution of the United States, intended to deny to both national and state governments any power to issue paper money.[5] Nevertheless, any credible observer of the passing scene during the past century must recognize that official acceptance of the theory that state-sanctioned trade goods ("money") must be related to a precious metal standard will occur far in the future, if at all.

The looter state garners unyielding support from myriad beneficiaries, e.g., public school teachers, unionists, bureaucrats, judges, politicians, and businessmen of the limousine liberal ilk; such pre-reflective men and women own little motivation and scant ethical inclination necessary to stand aside from personal benefit and to radiate principle.

No matter how principled and accurate one may be in proclaiming a legal theory resting upon sound economic and historical fact, acceptance of that theory will and must depend ultimately upon recognition, if not by a majority of voters under a universal suffrage system, then at least by an elected and effective majority of politicians. Sparse chance exists for adoption of any proper or fair system of taxation given current political dynamics.

How to Make a Million Dollars

Investment savants of the conservative tinge may actually outnumber political pundits and self-styled tax experts appealing to the right. Many of this genre combine scant economic knowledge with newborn conservatism or libertarianism, seasoned oft-times with a dash of religious fervor. They produce an abundance of newsletters and reports, normally coupled with investment seminars, lectures and conferences. Prolific charts and graphs illustrate their convoluted

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prognostications. Two earmarks identify many of these financial populists: High prices of literature of low order, and almost universally bad writing.

As with the soothsayers of the tax revolution, many of the investment advisors of the market philosophy (as well as most of their traditional brethren) commit a fundamental series of errors. First, they assume that history recurs precisely. Second, they rely upon esoteric technical charting as a tool of prediction. Third, they attempt to apply Austrian economic principles to short-term market investment strategy without a fundamental comprehension of those principles. Fourth, they overlook the fact that right action does not always assure success in a market peopled with myriad volitional human beings exercising free (or partly free) choice, where some (if not most) of those actors operate upon irrational or incorrect premises. Fifth, they interpret an occasional successful forecast as evidence of infallibility and as a demand for self-laudation.

Investment by finite individuals proves difficult in the best of times. Even the most committed believer in personal liberty must acknowledge that his quest for knowledge is incomplete and endless. By virtue of our human nature and our gift of free choice, we necessarily forecast inaccurately; even a perfect belief on my part in the moral private property order will not assure a like acceptance by even one other investor, and in a market, supply, demand, and price by definition result from a concatenation of choices which are mistaken or irrational, at least in part. William Rickenbacker has admonished that use of the ubiquitous computer demonstrates that no chart theory or technical analysis provides any useful prediction expertise.[6] Knowledge of human nature and observation of fundamental principles delineate the most acceptable and valuable talents for the investor—and no pedant or medicine man can prescribe large doses of those commodities.

Perfection as Illusion

Consider two disclaimers.

First, do not interpret this criticism as directed against fundamental ideas. Those who believe in individual choice and the limited state may well differ upon various issues—indeed, the central tenet of this essay focuses precisely upon this very element, that men and women interpret phenomena and concepts in disparate ways, that in the words of St. Paul, they view truth, if at all "through a glass darkly".[7]

Second, do not assume that the fundamental charge levied here applies only to the political/economic right. The criticism attaches univer-

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sally to all persons of whatever persuasion. The liberal obsession with fatuous omniscience and the presumed perfectibility of mankind appears so patent and foolish as to require no extended comment. A leading liberal dogmatic stated the proposition concisely:

> The Senator [Wayne Morse] was totally committed to the perfectibility of the Democratic political process. Particular programs and policies could be argued as right or wrong, but not the process. He counted it the one authentic and distinguising American characteristic. The essence of his political idealism was a devout belief in the ultimate rationality of the electorate.[8]

The point which escapes those who replace reason with rage is the universality of the trait. Self-righteous satisfaction does not become any of us.

What, then, of the perfect illusion? It is simply this: In a world dominated by bloc or aggregrate thought, it is deceptively easy to overlook the individual, and to do so virtually compels the error of belief that men act as hordes or groups and not as persons or individuals. The Austrian School perceives the ill-advised Keynesian focus upon macroeconomics to the obscurity of the single acting man or woman who produces, earns, saves, consumes, and thinks. Nevertheless, proponents of that primal school of thought sometimes forget to transfer the fundamentals there recognized into other disciplines.

The philosophy of individual liberty necessarily focuses upon, and dignifies, the individual human being as an actor causing consequences, accountable for his conduct, and (by virtue of his signal ability to select from an array of choices) imperfect and mistake-prone in the sense of being incapable of universally determining a desired result. Dr. George Charles Roche III concludes that one of the most telling legacies of Frederic Bastiat was his insistence "that men were imperfect and unique, that freedom could be found only by protecting the individual's life, liberty, and property from the predations of other men, organized or unorganized."[9]

Both the socialist of the left and the anarchist on the right fall prey to the self-same misconception concerning the fundamental nature of mankind: Both the true socialist and the philosophical anarchist must agree (whether they concede the point or not) that the minor premise of their fundamental syllogism is that man is perfectible. The socialist contends that mankind, while fallible now, may achieve a perfect society of perfect grace and freedom if only the universal electorate will choose the right leader and allow him to impose his plan of communal owner-

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ship of all assets and his egalitarian book of rules.

The anarchist, on the other extreme of the political spectrum, decries the mandate state, yet assumes that all governmental functions may be performed in a privately organized society upon a rational basis; the anarchist necessarily posits, for example, that private courts will adjudicate all controversies necessarily arising from real or supposed collisions of rights between competing individuals, yet he offers no solution to avoid civil chaos attendant where one party to the private litigation refuses to accept the arbitrator's decision.

The Illusion of the Left

The illusion of the left results from the belief in codification and prior restraint, of channeling all human action into "acceptable" codes of conduct determined by an elite, no matter how chosen. The illusion of the right results from a like assumption of perfectibility: The populist assumption that a community jury of peers may ignore legal screening processes and inevitably perform acts of untrammelled justice, the belief in the judges of today as guardians of individual rights, the creed that an informed and rational minority may influence liberal controllers of the political apparatus, the dogma that others will accept the notions of the true believer, and like fallacies too prevalent to mention.

History unfolds. Men and women act, and at times, they act unwisely, inhumanely, in contradiction to the natural order of things eternal. Because the world consists of many acting beings, individuals whose own internal scale of subjective values constantly changes, and because time is unfolding with the historical process, history does not inexorably repeat in absolute detail. Because mankind is not possessed of infallibility and perfect foresight (or even perfect hindsight, at least in the assessment of causal consequence), our choices consist of imperfect selections among alternatives.

Even granted the perfect philosophical foundation, the perfect illusion will still occur: Consistent application of truth eludes us all; and, each individual possesses significantly differing fundamental value structures impelling each person's course of conduct so that the hypothesized perfect choosing being must necessarily find his sought-after certainty impeded at least in part by the interplay of other actors on the stage.

This essay presents no startling vision. It seeks merely to underscore the inevitable danger in reposing ultimate faith in a doctrine uttered by another fallible being, no matter how persuasive and articulate the

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protagonist may appear, nor how reasonable the price he charges for the dispensation of his nostrum. The psalmist David, 2500 years ago, cautioned his followers to "put not your trust in princes, nor in a son of man, *in whom there is no help.*"[10] And the sage of Kirkcaldy, Adam Smith, noted that the quintessential teacher, Socrates, had chided the inconsistency of those who profess to offer the magic golden key to all understanding:

> Isocrates, in what is called his discourse against the sophists, reproaches the teachers of his own time with inconsistencies. "They make the most magnificent promises to their scholars, says he, and undertake to teach them to be wise, to be happy, and to be just, and in return for so important a service they stipulate the paultry reward of four or five minae. They who teach wisdom, continues he, ought certainly to be wise themselves; but if any man were to sell such a bargain for such a price, he would be convicted of the most evident folly."[11]

Perhaps recourse to the teacher, Socrates, provides one who seeks certainty and truth with a hint of effective methodology: Socrates advised those who sought him out that: "I know not; but I know that I know not." Apprehension and appreciation of the doctrine of human liberty, of the moral private property order, is a full-time, lifetime task, a task which proves effective only when the scholar concentrates upon his or her own improvement and leaves others with the task of their personal advancement.

—FOOTNOTES—

[1]The eminent nineteenth century anarchist, Lysander Spooner, provided the most provocative advocacy of a constitutional doctrine which would effectively support the theory of jury nullification. *See,* Lysander Spooner, *No Treason: The Constitution of No Authority* (Ralph Myles Publisher, Inc., Colorado Springs, Colorado: 1973) (original publication date 1870). The Oregon Constitution, among others, provides an example of a poorly articulated basis for the state doctrine of jury nullification. *See,* Oregon Constitution, Article I, Section 16.

[2]Charles Mackay, *Extraordinary Popular Delusions and The Madness of Crowds.*

[3]The Oregon System encompassed the initiative, the referendum, the recall, direct election of Senators, and a state Corrupt Practices Act. It also provided for a presidential primary and for local home-rule. *See,* for an erudite legal perspective on the adoption and early operation of the Oregon system, James D. Barnett, *The Operation of The Initiative, Referendum and Recall in Oregon* (The MacMillan Company, New York 1915); *see also,* Joseph Gaston, *Portland, Oregon, Its History and Builders* (The S. P. Clark Publishing Co., Chicago, Portland, 1911).

[4]Hans Kelsen, *The Pure Theory of Law* (1934–35) pp. 517–523.

[5]See, Constitution of the United States, Article I, § 8, 10 which developed out of the delegates' distaste for the "aggressions" of paper money as noted by James Madison, *Journal of the Constitutional Convention of 1787* for June 19, 1787. *See generally,* Max Farrand, *The Records of The Federal Convention of 1787* for May 29, June 6–8, 18–19, July 17, 19, 21, August 15–18, and 28. The vote of August 16, 1787, as detailed in the proceedings of the Constitutional Convention, demonstrate that the

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delegates prohibited the emission of bills of credit as a means of preventing fiat currency. *See also,* Luther Martin, *Genuine Information, Delivered to the Legislature of the State of Maryland on the Proceedings of the General Convention Held at Philadelphia.* Alexander Hamilton declared "* * * the emission of paper money * * * [is] incompatible * * * with the principles of good government". *The Federalist* No. 80.

In his preface to the debates in the Convention of 1787, James Madison observed that the recent history of the colonies documented the need for restraint upon use of paper money. III *Documentary History of the Constitution,* 1–7, 796 *et seq.* The point was reiterated in James Madison to —; 1833 Hunt, *The Writings of James Madison,* IX 522. *See also, Ontario Bank v. Lightbody,* 13 Wend. 103, 111 (New York 1834) quoting from Mr. Gallatin, an early statesman, in his essay on *The Currency and Banking of the United States,* p. 29. *See also, Craig v. The State of Missouri,* 4 Pet 410, 432, 434–436 (1830); *see also,* Charles Prather, *Money and Banking* (Chicago: Irwin, 1941) 205.

The Supreme Court of the United States long ago decided that the Constitution prohibited the issuance of paper money by the states under Article I, Section 10. *Lane County v. Oregon,* 7 Wall. 71 (1868). This case has never been overruled.

The eminent early Chief Justice John Marshall recognized that the Constitution absolutely and expressly forbade paper money and legal tender laws. *Sturges v. Crowninshield,* 4 Wheat 122, 205 (1819). The eminent jurist and scholar, Mr. Justice Joseph Story, clearly differentiated between specie (money) and bank notes in *United States Bank v. Bank of Georgia,* 10 Wheat 333, 347 (1825). The Marshall Court reiterated its stand in *Craig v. The State of Missouri, supra,* 4 Pet. 410, 432, *et seq.* (1830). The Roger Taney Court continued holdings which undergirded this position in *Gwin v. Breedlove,* 2 How. 29, 15 U.S. 16, 22 (1844) and *United States v. Marigold,* 18 U.S. 261, 263, 9 How. 560 (1849).

A phalanx of Supreme Court decisions in the Civil War Era culminating in *Hepburn v. Griswold,* 8 Wall. 603 (1869) re-emphasized the point. Indeed, Chief Justice of the United States Salmon P. Chase recognized his own error in the issuance of greenbacks during the War Between States as Secretary of the Treasury for President Lincoln. *Hepburn v. Griswold,* 8 Wall. at 625-626.

No constitutional convention was called and no amendment wrought in the fabric of the great document which governs our land, yet two Republican appointments to the Supreme Court of the United States within a short period of time during the Reconstruction Era altered the universal judicial construction of the Constitution, a fracturing of logic which extends to this day. *See, Knox v. Lee,* and *Parker v. Davis (The Legal Tender Cases),* 79 U.S. (12 Wall.) 457, 20 L.Ed. 287 (1870) and their illegitimate offspring, *Juilliard v. Greenman,* 110 U.S. 421, 4 Sup. Ct. 122, 28 L.Ed 204 (1884).

[6]William Rickenbacker, "Methods of Picking Stocks," *Private Practice* (May 1975) pp. 45–46.

[7]I Corinthians 13:12.

[8]Willard Wirtz, "An Attack on Political Pessimism", 60 *Old Oregon,* (No. 1; Fall 1980) 17.

[9]George Charles Roche III, *Frederic Bastiat: A Man Alone* (Arlington House, New Rochelle, New York, 1971) 233. For another excellent study of influence of Bastiat, *see,* Dean Russell, *Frederic Bastiat: Ideas and Influence* (The Foundation for Economic Education, Irvington-on-Hudson, New York 1969).

[10]Psalm 146:3.

[11]Adam Smith, *An Inquiry Into The Nature and Causes of the Wealth of Nations,* (Heirloom Edition, Arlington House, New Rochelle, New York), Book I, pp. 149–150.

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Robert Awenius

Why Not Private Charity?

For some period of time there has been considerable evidence that private charity is superior to government welfare as a means of overcoming poverty in America. Empirical data suggests that private charity indeed would do more for the poverty-level families of this nation than is being achieved under the present welfare system.

However, we must not conclude that this seemingly radical plan is anything new in the annals of mankind. In the nineteenth century one of England's most powerful voices for social reform, Charles Dickens, professed a belief in private charity as opposed to public charity. He opposed government charity because of its ineffectiveness. He was convinced that the polestar of charity was the human being's innate concern for another creature. He felt that the aid and assistance extended by private persons was more powerful, useful, and kind than the charity of government. Just to cite his views is to affirm the favored position of private charity, as in the following statement:

> Dickens was a man of great kindness and sympathy with weakness and suffering, and these characteristics led him not merely to engage in practical philanthropies, but also to use his art for the purpose of social reform. The maladministration of the poor laws . . . the hypocrisy of insincere ministers of religion—these and many other wrongs and abuses were exposed and satirized in his novels.[1]

Following the Napoleonic Wars much discontent and unrest prevailed in England, but instead of

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revolution the Victorian Age brought relative peace, manifested by great reforms such as the Reform Acts of 1832, the Factory Reform of 1833, and the Poor Laws of 1834. With these reforms passed, the general bent of the programs was to treat the symptoms of poverty, not the causes. As a result, there was a great alienation of the working masses and only partial satisfaction within the commercial and industrial strata of society. That is the very same complaint we hear today concerning our welfare laws: alienation of welfare clients and complaint of the taxpayers who are shouldering the burden of the necessary taxation to support the system.

Today in the United States the bulk of the donating public make their contributions to philanthropy by taxes through their government or privately to organized charities. There is negligible warmth of heart between the public donors (taxpayers) and the recipients—albeit, there is slight concern by those giving funds as to direct knowledge of the state of affairs or indigency of the beneficiaries. There is undoubtedly more concern in this regard in the case of private charities. Also, there is some little suspicion on the part of many contributors that a considerable number of those who ask for charity are undeserving. This same attitude was true during Dickens' time when, beginning about 1818, the upper classes made attempts to protect themselves by forming a Mendicity Society, where subscribers contributed funds to the Society rather than give directly to beggars. The Society investigated each case to see if each had merit.

Organized Charities

Much of the configuration concerning charity during the Victorian Age was greatly like charity as it is today. Then, for example, out of a total of 640 institutions in 1862, 279 were founded in the first fifty years of the century and 144 between 1850 and 1862, covering a wide array of activities: orphanages, almshouses, dispensaries, hospitals, societies to provide coal, blankets, potatoes, shoes, religious literature, surgical appliances, linen for women in childbirth, etc.[2] Today, just our United Fund drives in the large cities disburse funds in a similar array of organized charities.

After all the billions spent on charity in the United States in the last forty-eight years by the federal government, we find a welfare culture that goes from one generation to another. This is caused by the fact that for the poor in most of the country the wages of common labor are far below the benefits of the Federal dole—i.e., AFDC, Medicare, food stamps, public housing, public welfare, and public defenders.[3]

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Several years ago it was calculated how much would be required to lift every man, woman, and child in America out of poverty by simply giving them money. The figure came to one-third of what was spent on poverty programs.[4] The Comprehensive Employment and Training Act (CETA) has been defended as a means of reducing the huge unemployment rate of black teenagers. However, Michael Novak has calculated that every black teenager in America could be employed forty hours a week, year-round, for less than one-fourth the cost of CETA.[5] The poverty programs and CETA noted above would indicate that much of the money appropriated by Congress has ended up in the pocket of someone other than the poor. One might say, on this basis, that at least two-thirds of every dollar appropriated for poverty went to the bureaucracy and one-third "trickled down" to the poor. This two-thirds was spent on overhead—administrators, statisticians, consultants, economists, sociologists, think tanks, universities, and social agencies.

It should be noted that there is one sure cure for the welfare problem—a solution that would eliminate the problem in one fell swoop: by the radical but connative measure of having every church and synagogue in the land become responsible for just one family receiving welfare. Just think what such a plan would accomplish! Daresay, it would reduce the welfare rolls by a third, remove the undeserving, concentrate aid on the deserving, and save billions of taxpayer funds. However, it would be naive to expect such a simple solution to be employed. It would, however, make an interesting pilot program in the future, applied on a local scale, and the results charted.

There are a multitude of reasons and factors that tend to mitigate against public welfare curing the causes of poverty and to demonstrate the ameliorative effect of private charity.

Let Freedom Reign

Government-directed programs to produce a healthy economy provide the best use of government initiative, because this method does more fundamentally for the poor. A government that succeeds in stifling inflation accomplishes the best possible benefit for its poor citizens, since they are the helpless victims of inflation. In the United States a reduction of inflation from the ten percent level of 1980 to three percent in 1984 provides the poor with a cost savings in the billions of dollars. A government that by its policies encourages the capital that produces six hundred thousand new businesses in one year and sees these new firms hiring hundreds of

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thousands of persons in the private sector, will witness hundreds of thousands of folks on the Federal dole transferring to jobs in industry; this alone is the best possible future for the poor of the nation.

The adoption of welfare state procedures and plans tends to encourage the destructive activity of the modern state in the mass liquidation and redistribution of wealth. The normal and hitherto accepted role of government has been to maintain law, justice, and order, defend the nation abroad, and to permit every man the ownership of his property. In general, the government's business in the past was to protect the common welfare of its citizens.

The destructive effect of the welfare state is manifested in its expropriation, taxation, or arbitrary creation of money and credit—all done in the name of the poor. The effect of this damaging tendency is to abolish the independent citizen and foster the idea that all the people should look to Washington for subsistence—i.e., to become parasites, wholly dependent on government for all their needs and wants. With this tendency, the politicians follow a short-term expediency of approving sophisticated theft (in redistributing the wealth) without regard to ultimately damaging long-term results.

The very people who have done so much and will do so much in aiding private charity—the great middle class—are economically squeezed by the welfare state and find its capacity to support private charity greatly diminished.

Welfare Measures Promote Rather than Prevent Poverty

Welfare tends to impede progress against poverty. Since welfare offers incentives counter to self-sufficiency and production, relatively few of those on welfare will have the heart or sufficient will or resolution to become self-sufficient and pay their own way in the world. Thus, welfare tends toward diminished productivity and production and it encourages those on the welfare rolls to accept unemployment. This insidious Federal dole induces idleness among its beneficiaries, subsidizes this very indolence, and results, for example, in the loss of hope of the poor owning their homes, accumulating any savings, or to educate their children for a better future than their parents realized.

The economic future of this nation depends on production of more and more material wealth, but the welfare state presents us with a paradox: namely, welfare benefits go to people who—for various reasons—are relatively unproductive; but money for welfare comes from persons who are relatively productive. Thus we have a Federal dole system

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that sustains—and increases—poverty.

Welfare itself is a problem. The sheer cost and inconclusiveness of government charity is of itself a telling argument in support of private charity. In general, government is grossly inefficient, and coupled to this is the cupidity of the vested bureaucracy that feeds on the money flowing from the Federal treasury.

Our concern is to aid and assist the people in the nation by a method that does the most for them, and to shun measures that do not treat the causes of poverty. In general, we all are our brothers' keepers and we should undertake that responsibility, but along avenues that truly raise the poor to a productive place in our society.

The history of man's climb from savagery to a civilized status would indicate that the truest, surest, and most efficient method of aiding a poor man is along the lines of free-choice inducements. When a poor man sees that work will provide more material reward than idleness on a government dole, he will choose work. With private charity dispensing funds to the poor, the nation would avoid the stultifying vice of idleness providing more gain than derived from common labor. Thus, private charity would accomplish more for the poor than government charity. And with private charity directing the dispersing of funds, there is a far greater likelihood of these monies treating the causes of poverty than simply treating the symptoms.

Therefore, the writer believes there is an estimable case for the general adoption of private charity in place of public charity.

—FOOTNOTES—

[1]*Harvard Classics, Shelf of Fiction* (New York: P. F. Collier & Son, Co., 1917) Vol. 7, p. v.

[2]Gillian Avery, *Victorian People (In Life and Literature)* (New York: Holt, Rinehart & Winston, Inc., 1970) p. 223.

[3]George Gilder, *Wealth and Poverty* (New York: Basic Books, Inc., 1981) p. 200.

[4]*Tulsa World,* Dec. 11, 1981.

[5]*Ibid.*, quoting Michael Novak, author of the *American Vision: An Essay on the Future of Democratic Capitalism* (Washington, D.C., American Enterprise Institute for Public Policy Research, 1978).

The Helping Hand

IDEAS ON LIBERTY

THE most helpful man in any community is not the man who dispenses the most charity. On the contrary, he is the one who makes any kind of charity or aid unnecessary. He is, if I may say so, the man who gives the most people self-respecting gainful employment.

VOLLIE TRIPP

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Howard Baetjer Jr.

Of Obligation and Transfer Taxation

In today's redistributionist society, government promises a more equitable distribution of wealth than the market's actual allocation. It does so by transfer taxation: taxing everyone and subsidizing some. Of the several arguments for this transfer taxation, one of the most common runs as follows: *those who are well-off have an obligation to care for those who are not well-off; therefore the government may justly tax the former to support the latter.*

This argument is false: its premise is a partial truth from which the conclusion does not follow in any case. A well-off individual may or may not have a moral obligation to care for those who are not well-off. But even where he does, it is not the government's business, because this positive kind of obligation derives from the values and standards of that individual, not from others' rights. It is the government's business to defend rights, nothing more. Where rights are not involved, it is solely the individual's business to make use of his own property in accordance with his own values and standards. Indeed, as far as *rights* are concerned, the individual even has a right to act at odds with his values and standards, to be mean and selfish, so long as he respects others' rights. The proponents of liberty must understand and affirm this if they are to answer fully this argument for transfer taxation.

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The Conclusion

"The government may justly tax the former to support the latter." Consider this conclusion to see where the argument is leading. What is logically implied in the notion that the government may take the property of the well-off to sup-

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port the worse-off? One implication is that the worse-off have a right to the property of the well-off, a right which justifies the transfer. Some make this point explicitly, speaking of "welfare rights," or contending that the right to life itself includes the right to such property of others as is needed to support life. But if property is owned by A in the first place, then B can have no right to it—to own something is precisely to have a right to it. Another implication is that the majority in power has just authority to threaten A with force to make him give up his property, which they then turn over to B—taxation, remember, is ultimately backed up by the policeman's gun. But this authority negates both the rights of minorities against tyrannical majorities, and the right to pursue happiness—to use one's talents and property in pursuit of one's own ends.

This argument's conclusion that some may justly be taxed to support others thus collapses before fundamental principles. One is tempted to let the argument rest there: with a conclusion so far out of line with basic rights, the reasoning to it simply must be invalid. But this rebuttal is not enough. The reasoning is so persuasive that we must deal with it, too. Many who are troubled by transfer taxation believe also that people *should* give to those in need, that it is wrong for them not to. Government responds to other wrongs, they reason; surely it should respond to this one. Let us now see where this reasoning breaks down.

The Confusion

The crucial error in the argument is a confusion of two meanings of *obligation*—meanings which are evident in the ways we use the word *should*. One usage pertains to fundamental obligations deriving from other people's rights; in this sense it is synonymous with "must." A man should pay his debts—because the people from whom he has borrowed have a right to their property. He should allow others to assemble, worship, work and trade as they please—because others have a fundamental right to act free of restraint (so long as they act peacefully). He should not murder—because others have a right to life. When we say a person "should" do this sort of thing, we refer to obligations that derive from basic rights. Notice that in each example here, what is immediately at stake pertains not to the individual obliged, but to the others: *others'* property, *others'* liberty, *others'* lives. The individual is obliged because he is dealing with things to which others have a right.

A second usage of *should* pertains to what is desirable or preferable. In this sense it is synonymous with "would do better to." One "should"

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eat healthful food—because that is preferable to eating tainted food. One should change the oil in his car periodically—because that will help preserve the car. One should be pleasant in dealings with others—because such treatment will make life more agreeable. When we say a person "should" do this sort of thing, we refer to "obligations" that derive from what is best. Notice that in each of these cases, what is immediately at stake pertains to him, not others: *his* health, *his* car, *his* behavior. He is "obliged" not because of anybody's rights, but because of what is sensible, what is best under the circumstances.

The critical factor determining which kind of obligation exists in any situation is ownership of whatever is involved. If it belongs to someone else, be it some material thing or life or liberty, then the individual has a "must" obligation, a basic duty to respect the owner's rights. Consider the case of a thousand dollar debt, for example. The money belongs to the lender; hence there is a "must" obligation for the borrower to return the money as per agreement. Likewise consider the case of some person's physically injuring another. The person injured "owns" his own body; therefore the person who injured him must make restitution.

But if what is involved is the individual's own, then he has only the "obligation" to do what is preferable. Consider the case at issue in this argument for transfer taxation, for example: care for those who are worse off than some well-off individual. What precisely is "care," in this context? It is not the psychological feeling of wishing others well, but the physical realization of that feeling: the money, food, clothing or shelter provided: it is whatever the well-off individual gives or might give to help the worse-off person. And whose is it? Ah, yes—here is the question. Until it actually has been given (if the notion of property rights is to have meaning), it is the property of the giver. He alone has a right to these things that might, if he decides to give them, become "care" for someone else. The individual is thus "obliged" to do with these things whatever is preferable, whatever is best among the many uses to which he might put them.

The Premise

With this distinction between kinds of obligation in mind, let us consider again the premise of the present argument. Does one who is well-off have an obligation to care for those who are not well-off? When one does, clearly, the obligation is of the second kind—a matter of what is preferable among available choices. But this idea raises additional questions: Preferable to whom? According to what standard?

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The answer to these questions is inherent in each individual's inescapable responsibility for his own actions: each individual is bound to make his decisions according to his own values, his own sense of right and wrong, good and bad, better and best. About situations involving others' rights, this decision is relatively simple: the primary value of respecting rights is inherent in man's nature, and anyone thinking clearly will recognize this. But where one's own property is concerned, one does not have the primary value of rights as a guide, and he must therefore weigh the importance of lesser values. Would it be more valuable, in his honest judgment, to devote a certain amount of his time and property to caring for a certain group of people less well-off than he? Or would it be preferable to devote that time and property to the future security of his family, or to recreation, or to increasing his job skills, or to cancer research, or to a struggling symphony orchestra? He must choose; he cannot do all. What should he do? No one can answer this but the individual himself. With his property, it is his responsibility to decide. Where he is responsible, his proper basis for decision is his own standards, his own values. If he acts contrary to these, he betrays himself. What he is obliged to do is what is preferable according to his own values.

Personal Values Depend on Many Variables

We must note in passing that a person's values are not arbitrary. They result from our common human nature, the nature of the world, and from each person's individual attributes and situation. These values are not chosen by whim; they must be discovered and understood by long effort (this process is the core of education). Of course people are prone both to misapprehend their actual values and to rationalize away their knowledge of them when prompted by fear, shortsightedness or other human failings. But this does not make their actual values any less actual. It merely demonstrates the difficulty of understanding and acting on them.

One does not really do what is preferable to himself in the complete sense if he gives in to temptation and injures another or lets petty selfishness stifle a more fundamental generosity. This is to sacrifice more important to less important values. On the contrary, one serves himself best when he suits his highest values, when he is *self*ish in the sense of following the dictates of his best self.

Well, then, does a well-off person have an obligation to support those who are not well-off? That depends on his own (honest, actual) pattern of values. If, in a given situation, he sees others' need and believes he

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should do something to relieve it, then he has a moral obligation to do so. But this obligation derives from his own standards. It does not derive from the standards of the government, or "society," or any other individual. If, on the other hand, he sees that need but believes he should devote his time and money elsewhere, then he has a moral obligation to do that instead.

Any obligation for an individual to care for the less well-off is secondary. It exists to the extent that the individual values such care above all the other purposes to which he might devote his time and attention. Anyone who values more highly some other purpose (such as, for example, securing the future well-being of one's family) does not have any such obligation.

The Logic

The premise of this transfer-taxation argument is thus a partial truth, an over-generalization. *Some* of those who are well-off have an obligation to care for some of those who are not well-off, but some do not; obligations vary from individual to individual and situation to situation. No sound argument can be based on a partial truth, of course, but also the logic here is invalid: even where the premised conditions are true, the conclusion does not follow. Even where one does have an obligation to care for certain others, the government may not justly enforce this obligation by taxation.

In the first place, of course, no one but the individual himself can know his actual standards and values for the use of his own property, and hence what sort of obligation he has to care for others, if any. And how could the government enforce obligations that it could not identify? In the second place, since government has no power over the individual will, mind and spirit, transfer taxation does not really make an individual *give* to, or *care for* others. In transfer taxation the *government* gives . . . what it has taken by force. Caring has nothing to do with the matter. Thus the alleged obligation to care or give, is unenforceable by its nature.

But these considerations are irrelevant anyway, since, in the third place, *only obligations based on rights may rightly be enforced at all.* Obligations apart from rights, to do what one believes best with one's own resources, are a matter for individual conscience, not for extraneous busybodies. The use of force on behalf of a certain individual or group can be justified only where the rights of that individual or group are threatened. Government exists not to take the place of individual conscience and good judgment; on the contrary, inverting Jefferson's phrasing, "governments

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are instituted among men . . . to secure . . . rights." Government should and must make people pay their debts and refrain from restraining or murdering others. But it should not and must not force people to eat sensibly, to maintain their cars, to be polite—or to "care for" others.[1]

It is well for others to try to *persuade* someone when they think he is selfishly rationalizing away an obligation he actually does feel towards others. But no group, whether the majority, the "society," the ruling junta or the government, may rightly force someone to act against his wishes in what is fundamentally his affair.

In passing, let us affirm the implication of this: that individuals have a right to *ignore* their personal, moral obligations to those who are worse off. Indeed, they have a right even to be selfish, mean-spirited, ungenerous and miserly, as long as they do not intrude on others' rights. They *should* not behave this way, of course—they and everyone else will lose by their doing so—but they have that right. And the rest of us, in private and through government, are obliged to respect that right.

In the final analysis, what can be said for the contention that *"those who are well-off have an obligation to care for those who are not well-off; therefore the government may justly tax the former to support the latter"*? Nothing. It is fallacious throughout. The well-off may or may not have such an obligation, but even where they do, it is a personal obligation entirely beyond the proper scope of government. The premise is a partial truth, unrelated to the conclusion, which in any case proposes a bald violation of fundamental rights. There is no ethical justification for transfer taxation. On the contrary, transfer taxation itself is at odds with ethical principles. Care for those who need care is a matter of individual values and individual responsibility.

[1]If this idea seems strange, consider that even such a clear moral obligation as telling the truth is not enforceable in our legal system except where rights are at stake, nor should it be. A lie must be punishable when it constitutes fraud or perjury, but not when it wounds a lover or deceives a voter. These latter wrongs are injuries, but not injuries of rights (fortunately for many politicians!).

Paternal Care

IDEAS ON LIBERTY

FEDERAL AID in such cases encourages the expectation of paternal care on the part of the Government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood.

GROVER CLEVELAND

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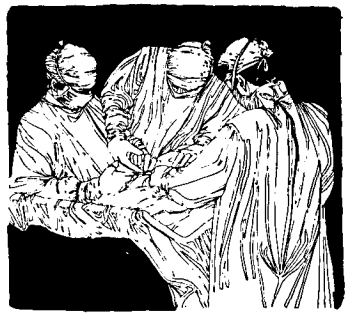
Jane M. Orient

Demand Side Economics in Medicine



SUPPOSE that a pot is boiling over on the stove. What should you do? a) put a heavy lid on it; or b) turn down the fire.

What is it that fuels rising prices? A seller can ask whatever price he wants—but if it's too high, he won't get it. If customers throng to him, he can ask more. If only a few straggle by, he'd better think about asking less. High demand (relative to supply) raises prices.

If sellers are doing a brisk business, chances are that more people will see an opportunity to get into the act. More booths spring up in the marketplace. As competition increases, prices tend to go down. Supply and demand come to equilibrium. At an efficient farmers' market, most trucks go back to the farm nearly empty, and most customers go home with something to eat for dinner. If any money or produce changes hands without consent of both parties, the thief is hauled off to jail.

To stimulate the economy, Keynesian economists suggest "pump priming." Pour in some money, and increase demand. This has certainly worked in medicine; demand seems to be unlimited. The founders of Britain's National Health Service had the naive hope that as soon as the backlog of medical problems was taken care of and everybody became healthy, demand for services would be saturated. This just didn't happen. For one thing, prolonging life increases the toll of the expensive and chronic illnesses of old age.

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Once the undertaker carries a patient off, he doesn't call again, whether or not his care is prepaid. In a fee-for-service system, doctors have even more incentive to try to keep patients alive.

As demand for medical services has increased, so has supply. When doctors started to make a good living, more people wanted to join the profession. Subsidies to education stimulated supply even more. Grants for building hospitals increased the number of beds, and with insurance and government reimbursement, hospitals were able to afford more and more sophisticated equipment. "Scarcity of resources" is a term that despite its frequent use doesn't really fit this situation. Excess demand resulted in excess supply. Like the sorcerer's apprentice, we seem to have conjured up a flood without knowing how to stop it.

The problem is that we have disconnected the natural regulator, and tried to substitute an artificial one.

Natural regulators for biological systems, industrial processes, and familiar home devices often work on the principle of negative feedback. If the blood sugar rises, the pancreas secretes insulin, which lowers the blood sugar, turning off the insulin. When a person takes a shower, the temperature of the water in the hot water tank falls, and the gas is turned on; as the temperature rises again, the flow of gas is turned off. The body needs some cells that respond to the glucose level. The water heater needs a thermostat. The economy also needs a sensor to balance supply and demand.

Could we, by conscious effort, improve on automatic negative feedback? Suppose that in a large apartment complex supplied by central hot water, the owner disconnected the thermostat and installed an engineer to regulate the flow of natural gas. Every time a tenant wanted to use the dishwasher or the washing machine or the shower, he would telephone the engineer with information about the type of appliance or the expected duration of the shower. A person caught with shampoo in his hair when the water got cold would provide the engineer with feedback.

One of the tenants who enjoyed a hot tub, and one who took in laundry, would want the engineer to consider their special needs. His friends at the gas company might be interested in increasing the sale of gas to the complex. However, the engineer would be responsible to the landlord for explaining the gas bill.

To document the use of resources, a sophisticated computer could be acquired. To share responsibility for hard decisions, a committee could be appointed. Only two things would be forbidden: 1) sending the tenants in-

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dividual bills that discriminated on the basis of metered flow of hot water, and 2) measuring the temperature of the water.

In a free enterprise economy, prices correspond to a thermostat. The price mechanism works automatically, integrating vast amounts of information related to the supply of and demand for a huge variety of resources and services. Large local variations may occur. Based on this computation, millions of buyers and sellers come to voluntary agreements.

Would it not be more humane to substitute a central planning board for this inhuman and automatic price mechanism? Unfortunately, life is so complicated that the planning board cannot obtain better information than that contained in the prices. However smart our engineer, he cannot be as good as a thermometer. Furthermore, though we may *hope* to obtain a totally disinterested and incorruptible engineer or planning board, positions of political power are seldom held by such individuals for long. And power is indeed required, if we intend to override the voluntary decisions that would have been reached by individuals in the marketplace.

In medicine, the price mechanism has largely been disconnected, by government programs such as Medicare and by first dollar insurance coverage. Seldom do people have to ask whether a test or procedure is worth it from an economic point of view. Insurance company fee schedules also insulate the providers of services from changes in supply and demand. Prices may generally be perceived as low by the (insured) consumers, and high by the providers, thus increasing both supply and demand. Looking at prices from the standpoint of the percentage of the gross national product is a crude and late indicator of trouble. It's like deciding that the water is too hot because steam is pouring out of the cracks.

Using the logic of most of our health care planners, with their "cost containment" regulations, we know what to do in such an emergency. Call the ready-mix truck to pour a concrete containment shell around the water heater, before it explodes.

W. Allen Wallis

IDEAS ON LIBERTY

THIS freedom of others to compete for advantages is effective in checking individual self-aggrandizement because economic information is effectively disseminated by prices. Prices represent one of the most efficient communication devices ever invented.

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Jerry Millett

Herbert Spencer: Freedom's Philosopher

EVERY broad social movement must have a philosophy behind it, something to give coherence, to explain, to justify, and to encourage. The freedom movement is no different. So in England, over a century and a quarter ago, driven by ideas of progressive liberty, Herbert Spencer published *Social Statics: The conditions essential to human happiness specified, and the first of them developed.* The book did not attract much attention, and Spencer sustained a loss on its publication. Nevertheless, the book worked its way into the public consciousness in both England and the United States, so much so, that in one famous statement, Justice Holmes protested that his fellow Supreme Court Judges were trying to write *Social Statics* into the Constitution.

Though plagued by chronic ill health, Spencer continued to turn out major works such as *The Principles of Ethics* and *The Man Versus the State* until his death in 1903. The success that finally came his way never turned his head, and the honors offered him were often declined: for example, when it was proposed to award him an honorary university degree (he was mostly self-taught), he turned it down, on the grounds that he did not want his ideas accepted because of the authority behind them, but because they appealed to the reason of the reader.

His beliefs in liberty and progressive development were very controversial during most of his lifetime, and since then his ideas have fallen into decline in public estimation and interest because of the attack of his enemies. He has been identified as the premier "social Darwinist," which has come to refer to a set of racist, Fascist notions of throwing little old ladies out into the street to starve, on grounds that "survival of the fittest" must be ruthlessly enforced on everyone. In short, the term "social Darwinist" has come to be a term of abuse, with no serious meaning behind it, and no attempt made to discover what "survival of the fittest" might really mean. Generally, the attack on Spencer has been of the personal variety, with one author, for example, even suggesting that Spencer's philosophy is traceable to his not having access to modern methods of dentistry for treating his bad teeth!

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Rediscovering Spencer

Probably this is not the place to sort out the many differences (and similarities) between Spencer and Darwin, nor to make the case for abandoning the "social Darwinist" label: nevertheless, in the past few years, the tide has begun to turn back toward freedom once again, as Spencer recognized it would, so it may be time to rediscover Spencer, to make use of his stalwart defense of civilization, progress, and liberty.

Indeed, his quality as a prophet can be mentioned first of all: writing in his *Autobiography,* Spencer saw in 1889 the demolishing of much of the freedom of the industrial revolution and the ". . . immense development of public administrations and the corresponding subordination of citizens—a system of industries carried on under universal State-regulation—a new tyranny eventually leading to new resistances and emancipations."[1] With the new movements toward deregulation, lids on taxes, and even tax cuts, we seem now to be at a time when our generation's "resistances and emancipations" are developing. If we are to achieve substantial gains in human freedom, we must have some idea of where we come from philosophically and where we are going practically, which means we must understand ourselves and our fellow beings better, in order to convince them of the rightness of liberty. Spencer's analysis can help us do these things.

To begin: human society is a changing thing. We live under far different circumstances, with different requirements than we did in hunting tribes, 10,000 years ago. Back then, a constant state of militancy, a stage of continual struggle, tribe against tribe, tribe against nature, was necessary for survival. That is no longer true today. We can no longer live successfully as barbarians, prepared to wage war against one and all for the benefit of our tribe. And if this seemed clear to Spencer as early as the 1850s, how evident it must be to us today, with the threat of nuclear war looming over us! Today, we need a far more peaceful way of life if we are to survive.

But if our way of life must be far different, one thing is constant: however organized, society is necessary—we are social beings. And, Spencer points out:

> . . . social life must be carried on by either voluntary co-operation or compulsory co-operation: or, to use Sir Henry Maine's words, the system must be that of contract or that of status; that in which the individual is left to do the best he can by his spontaneous efforts and get success or failure according to his efficiency, and that in which he has his appointed place, works under coercive rule, and has his apportioned share of food, clothing, and shelter.[2]

The organization by contract, in-

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dustrialism, free enterprise, that is, the peaceful social state, is the new social condition to which human beings must adapt themselves if they are to survive (and this, by the way, is all the "survival of the fittest" means): yet the character of these beings still retains elements from the preceding, barbaric, state. Thus a conflict is inevitable between the requirement of peace, with its voluntary cooperation which characterizes the new social state toward which we are heading, and the still existing set of ideas and beliefs with their tendencies toward violence and militancy, the marks of barbarism.

The Peaceful Society

How do we identify the peaceful society of the future? It is a society in which people are happy, because they are fulfilling their desires, and their desires do not involve the physical harming of the liberty of others. This is a society in which the *law of equal freedom* is recognized and followed. This is ". . . the general proposition that every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man."[3] And when we have reached the point where people generally obey this law, we will have reached genuine civilization: few, if any, barbarous traits will remain in the species.

The particular instances in which people act—creating or trading goods or services, speaking, writing, and the like—are cases of rights, a right being just a particular example of the general principle of equal freedom, and Spencer gives a number of these examples in *Social Statics*. If this law of equal freedom is correct, it can help us define what these specific instances of rights are, and we need not go and look up every reference in Spencer on the subject.

For example, I am a teacher: do I have a right to teach? In a sense, yes. I certainly have a right to stand on my property, and say what I choose, and if I choose to discuss elementary arithmetic, I may do so, as this is clearly part of my right of free speech, as it interferes with no one's equal freedom. But this does not mean that I have a right to compel someone to set up a school for me to teach in—that would be an interference with his use of his property, nor does it mean that I can force students to attend my classes, for that would be an interference with their rights. All the parties to the arrangement, the owner of the prospective school, the teacher, the students, must come together willingly, under terms acceptable to all.

Turn the proposition around a bit: it is sometimes said that there is a "right to education." But refer this presumed right back to the law of

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equal freedom and it can be seen as no right at all. If Joe and Sally wish to be educated, say, in the doctrines of Plato, and I know a good deal about Plato, if they have a right to education, they may compel me to teach them, which would be clearly damaging to my freedom to do as I wish with my time and energy. If Joe and Sally are to become knowledgeable in the doctrines of Plato, they must come to me and together we must compromise and cooperate voluntarily if no one's rights are to be violated.

This also serves to make the point about government schools and taxes for education. Says Spencer:

> Inasmuch as the taking away, by government, of more of a man's property than is needful for maintaining his rights is an infringement of his rights and therefore a reversal of the government's function toward him, and inasmuch as the taking away of his property to educate his own or other people's children is not needful for the maintaining of his rights, the taking away of his property for such a purpose is wrong.[4]

Yes, of course it is good for parents to educate their children, but for a parent not to do so is no breach of the law of equal freedom. Moreover, what we generally find, when this is called into question, is not that parents refuse to educate their children, but that they do so in ways the majority do not approve. To allow the State the power to control education, to force people to accept State schools for their children, and to force people to pay for these schools, is to give the State the power to force dissident schools to close down, a not uncommon happening even in this country in this time. The number of fundamentalist Protestant schools harassed by government functionaries seems to be growing, and the trouble can even extend to the university level, as seen in the difficulties faced by Grove City College recently.

To say that the government should educate our children is to say that government must decide what the goal of education is, and government commonly decides that the goal is to turn out good (that is, obedient) citizens, who believe everything that government tells them. Moreover, with government schools, every question of ethics, common sense, science and religion becomes a political question, to be settled by majority vote, with the consequent damage to the opinions of the minority. Should there be prayer in the schools? In government schools it becomes a political question, rather than being left to the parents, teachers, administrators, owners and children of particular schools, to decide on the basis of their beliefs and interests. Should evolution be taught? The same problems develop, and certainly neither evolution nor scientific creationism are political

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questions, yet they are handled in political ways.

Finally, it is sometimes said that parents don't know what good education is, and therefore someone wiser, some government administrator, must force the matter upon them. The foolishness of this can be immediately seen if one notes that these government administrators cannot decide on prayer or non-prayer, evolution or creationism, and therefore, the whole community is likely drawn into the dispute, and a political settlement is, after much bitter argument, forced upon everyone. How much better results under the law of equal freedom, where a wide variety of schools and education institutions and processes of all varieties can be set up to accommodate all the needs of all the different interests of the community, and no one interferes with anyone else's beliefs!

Of course this is just one example of Spencer's philosophy that can be put into practical application. But the warning must be given that the law of equal freedom does not mean that we will all enter some utopia and that everyone will always choose what is best for themselves. People, being fallible, will make mistakes.

What equal freedom means is that: (a) people will have the responsibility for their own lives, rather than surrendering this responsibility to others (or pretending that they have given up responsibility, which is every bit as destructive), (b) since that will be true, fewer mistakes will be made, as people will be able to see directly the consequences of their mistakes, and be able to quickly correct them. How many people, for example, have ruined their lives by taking dangerous drugs, under the false belief that they are not responsible, that someone else must take care of them?

Freedom, it must be emphasized, will not make everything and everyone perfect: but if followed, it will allow us to make ourselves better. The injury caused by government interference to the person who has not completely developed socially is evident, for since this person should become self-sufficient and develop his self-control so that his desires, when acted upon, do not involve the destruction of the equal freedom of another, the objective of society rightly constituted must be to encourage, not discourage, the government of the self by the self. That is, society must encourage self-control, and the only way a person can develop self-control is by practice.

Thus the individual, in order to develop, must not be shielded by the artificial agency of government from the consequences of his or her actions, but must be required to develop strengths and self-reliance under necessity's discipline, stern

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though it may be. Says Spencer in this regard:

> But to guard ignorant men against the evils of their ignorance, to divorce a cause and consequence which God has joined together, to render needless the intellect put into us for our guidance—to unhinge what is, in fact, the very mechanism of existence—must necessarily entail nothing but disasters.[5]

Yes, private helps and aids are useful, as they provide us with the chance to develop our beneficence, and they involve a close check on whether we are really doing good. But this does not mean that a government agency, impersonal, loaded with regulations and restrictions which never really meet individual needs and problems, has any merit.

This is also to say that the only business and duty of government is to protect the life, liberty, and property—the facilities for action—of the citizen. The State's sole job is comprehended by the administration of justice, the protection of the individual from physical damage from criminals at home and criminal regimes abroad. Under no circumstance should the State venture beyond this. If it does, it defeats the end for which it is permitted to function.

So the crucial question about government is what it does, not what form it takes. Certainly government ought to be democratic, because since all people are properly equally free, it must therefore follow that all should properly have equal political power. And since democracy is based upon the idea (however diluted in actual practice) that we are equally free, it is a relatively high form of organization, suitable for people who have made some progress toward civilized behavior. But always the basic question about government must be to what extent it is restricted to protection, the secondary question being what kind of machinery it uses.

If we are indeed in a time when personal liberty is just beginning to experience a renaissance, then we are also entering an era of sustained moral and material progress: if we follow Spencer's advice and accept our responsibility for our own lives, we may see ahead of us one of the great ages in humanity's long march toward the unfolding of a truly humane civilization. If this happens, a small part of the credit will be due to that extraordinary English philosopher, Herbert Spencer.

—FOOTNOTES—

[1]Herbert Spencer, *An Autobiography*, 2 Vols. (New York: D. Appleton and Co., 1904), Vol. 2, pp. 435–6.

[2]Herbert Spencer, *The Man Versus the State* (Caldwell, Idaho: Caxton Printers, 1960), p. 59.

[3]Herbert Spencer, *Social Statics* (New York: Robert Schalkenbach Foundation, 1970), chapter IV, paragraph 3.

[4]*Ibid.*, chapter XXVI, paragraph 1.

[5]*Ibid.*, chapter XXVIII, paragraph 4.

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Opportunity or Privilege?

In his *Opportunity or Privilege: Labor Legislation in America* (Bowling Green State University, Bowling Green, Ohio, 43403: Social Philosophy and Policy Center, 97 pp., $6.95), Charles W. Baird states his theme in an uncompromising first sentence. American unionism, he says, took a wrong turn with the passage of the National Labor Relations Act (the Wagner Act) in 1935.

The Wagner Act, though it has been amended throughout the years to mitigate its compulsory features, put government coercion behind union majorities. It did this by granting exclusive bargaining rights to whatever labor group could collect a majority of authorization cards. Minorities of dissenting workers were thus bound by decisions which, conceivably, they might disapprove either wholly or in part.

In Baird's opinion this violates the basic axiom of natural rights theory, the axiom of self-ownership. Full ownership, he says, implies that a worker is entitled to choose his own agent, or even to employ no agent at all.

Baird's command of natural law theory is comprehensive. Natural law begins with the right to life. John Locke, the philosopher behind the English Glorious Revolution of 1688, considered it self-evident that there could be no enduring human society if the right to life of individuals were not respected. Such a right must be unalienable. It followed from this that the individual, to support his life, must have a liberty that includes the right to acquire property. Hence the Lockean triad: life, liberty and property. Jefferson, for his own reasons, substituted "pursuit of happiness" for the

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word property, but he and the other Founding Fathers who wrote the American Constitution and the Bill of Rights considered the right and opportunity to acquire property a most important part of the happiness chase.

A right, in Baird's analysis, must be the same for all people. Each person has his natural human rights "simply by virtue of the fact of being human." If such rights are inalienable, they can never be justly denied by government, even one set up by majority rule.

Entitlements for Some at the Expense of Others

What used to be clear about the nature of rights became confused when politicians began to talk about such things as freedom from want and fear. In their attempts to abolish such wants, they began to pass laws that have more recently become known as "entitlements." To feed or house citizen X in case he couldn't provide for himself, it became necessary to seize some of citizen Y's substance, either by taxation or inflationary manipulation of the money supply. This was an invasion of Y's right to equal treatment. It was a denial of his property right, of his right to use his substance to pursue happiness in his own way, and as such it curtailed his liberty. In extreme cases, as in Soviet Russia and Red China, it could infringe his right to life itself.

The pattern followed in our labor legislation, as Baird shows, is part of a larger picture of denial of what made us distinctive as a nation. Our labor legislation is only one type of government favoritism toward one group of people over other groups and individuals.

This particular labor favoritism began with the Clayton Act, which exempted labor unions from the antitrust provisions of the Sherman Act. But, since the Clayton Act had no effect on the courts, Senator George Norris and Congressman Fiorello LaGuardia came up with a law in 1932 that specifically made so-called yellow dog contracts unenforceable in the courts. Under the terms of a yellow dog contract a worker would promise his employer never to join a union. Baird insists that outlawing the yellow dog contract is an infringement of freedom of contract. As a point of logic, if the right to sign a yellow dog contract is to be denied, the right of an employer to agree to a closed shop contract with a union should be denied too. What's fair for the goose should be fair for the gander.

The Union Shop

The Wagner Act, coming after the Norris-LaGuardia Act, permitted the closed shop. It did it by denying to employers the right to make their own deals with specific workers.

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Senator Taft—and Reed Larson of the Right-to-Work Committee after him—tried to tone this situation down. So we now have "union shop" arrangements to permit freedom of hiring with the provision that the newly hired employee will join the union after a short lapse of time. And we have the "agency shop," which lets the union collect dues from incalcitrants who refuse to join. In twenty states there are local right to work laws. They would not be necessary if our basic labor legislation were to be repealed.

In the thirties our new labor laws were justified as "answers" to what employers had been doing to deny the workers the elementary right of freedom of association. But Baird insists that most of our history of the "wrongs" visited upon the workingman is pure mythology. He cites in support of his own viewpoint the sort of history of the industrial revolution that was popular before Hayek's *Capitalism and the Historians* appeared.

Baird can hardly deny there was violence on both sides of the picket line in the nineteenth and early twentieth centuries. Louis Adamic's *Dynamite* was not made up of whole cloth. But Baird's general point, which is that unionism is not what has accounted for the rise in the American standard of living (and the British, too), is well taken. It was capitalism's superior productivity that brought us our high wages, not striking associations of workers.

Baird is correct, too, when he says it is a root mistake to apply majority rule thinking to labor unions. Majority rule is a political device that permits democracy to work when it comes to electing officials and passing laws. But unions are not governments. If workers want them, they are free to support them. But the unions have no legitimate right to impose decisions on anybody. They have no power to tax.

When unions start spending a portion of their collected dues to support candidates for political office, it is a patent infringement of the First Amendment, which guarantees all individuals the right to use their substance in support of political parties as they see fit. Fortunately the courts are coming to see it that way.

Whether the Supreme Court will, in the foreseeable future, get around to invalidating the New and Fair Deal labor laws is doubtful. But the "right to work" compromise that is now the law in twenty states will spread. And there is a good chance that strikes by public service unions to get out-of-line wages will meet with growing resistance from enraged taxpayers.

In time the Lockean triad will be revalidated across the board. Charles Baird's book is a valiant blow in a great cause.

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THE PHILOSOPHIC THOUGHT OF AYN RAND

edited by Douglas J. Den Uyl and Douglas B. Rasmussen
(University of Illinois Press, 54 East Gregory Drive, Champaign, IL 61820), 1984
235 pages ▪ $21.95 cloth

Reviewed by Howard Baetjer Jr.

AYN RAND has inspired thousands of young people to further study of economic and political liberty—and to professional careers in philosophy and other disciplines. Her novels gave readers examples of real heroes in a time when the heroic in man was being disparaged, and set up standards of truth and right in an age of relativism. Her philosophic thought, as expressed in both her novels and her essays, provided her readers with intellectual tools for analyzing social problems and for understanding the individual's place in the world.

Partly because of Rand's extremely forceful, often polemical style, and partly because in her time she stood so much alone, many who have admired Rand have absorbed too little of the substance, and too much of the form of her work. They have concentrated on Rand herself and on her defiant manner, rather than on the principles and ideas she championed. For similar reasons, other serious philosophers have paid very little—often studiously little—attention to her work. But as one of the contributors to the present volume says, "Rand is too interesting a thinker to be left to herself. The mainstream of thought needs her contribution." *The Philosophic Thought of Ayn Rand* deals with the substance of Rand's thought. It is a valuable beginning by serious philosophers at the important task of evaluating, describing, and developing Rand's philosophy, in a dispassionate, objective manner.

The book is divided into three sections, on Rand's metaphysics and epistemology, her ethics, and her politics. Each section begins with an introductory essay by the editors, which gives a brief overview of Rand's thought and significant contributions in that area. Then follow two or three essays in which the other contributors take up some particular aspect of Randian philosophy in that area.

The different contributors vary significantly in the treatment they give their subjects. Some provide straightforward analysis, explicating and developing Rand's thought. Others make more or less direct criticism, pointing out what they believe to be errors and suggesting ways in which these errors might be rectified (usually quite easily). Others relate Rand's work to the philosophical tradition, especially the

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thought of Aristotle, to which Rand's thought is explicitly indebted (and indeed, according to one contributor, more similar than Rand realized or acknowledged). Still others relate Rand's thought to other disciplines, such as the economics of Adam Smith, or show the potential for Rand's thought to provide a rational morality and individualist moral vision that is spiritually uplifting.

While all the contributors admire Rand and believe she has made a valuable contribution to philosophy, the book is not without criticism of Rand's ideas. Most of these criticisms are thoughtful and well-supported, but a few are rather glib and poorly documented. On the whole, however, the criticisms should be welcomed by students of Rand's work, allowing them to refine and enlarge their understanding, and to consider some potential improvements in Randian philosophy.

In discussing epistemology, Rand always emphasized the importance of context. One of the very welcome aspects of this book is that it provides a broader, richer context for Rand's ideas, allowing the reader to look at and understand many aspects of Rand's philosophic thought in a fresh and more complete way.

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